THESE DAYS:

Court Guilty of Unsafe Practice

By GEORGE E. SOKOLSKY

IN THE CONTROVERSY that is arising over the Supreme Court, Representative Wright Patman of Texas has raised a pertinent question, namely, that instead of basing decisions upon briefs submitted by litigants, the court briefs itself, using, at times, material not submitted to it by either party, but selected by the justice himself or by his law clerk who may introduce matter which, according to Patman, is "unrecognized and non-authoritative."

Patman said concerning this:

"...Formerly, we had every reason to expect that decisions by our Supreme Court would be controlled by the standards outlined by the Constitution, the law, the facts of the case and by the sound reasoning of the justices. In the past even though we felt the court had decided a case wrongly we nevertheless felt that we could understand that the court had a basis in the record of the hearing in the case for its decision..."

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Articles Aren't Authoritative

To quote Patman:

"...The Law Review articles, treatises, and so forth, prepared and disseminated by the lobbyists command no respect, have no standing as legal authorities, and therefore warrant no consideration by opposing counsel. If the rule were otherwise counsel would be rendered helpless because their arguments would become diluted heavily with extraneous miscellaneous matter designed to overcome the various theories advanced by the lobbyists posing as legal authorities."

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Element of Surprise

Do the justices always know who wrote the articles in the law reviews? Are these articles always signed? Do the justices study the backgrounds of the men who wrote those articles to determine whether what they say is based upon sound scholarship or is propaganda for a cause? Representative Patman makes the point that in two important cases, the citations, one from the Harvard Law Review and the other from the Yale Law Journal bore no signatures, the authors of the material being anonymous. Perhaps the justice of the Supreme Court who used these items in his opinion communicated with the editors of these publications to obtain the necessary information. But counsel for neither side could know in advance that these items would be cited in a prevailing Supreme Court decision.

There is an unnecessary element of surprise which could cause a miscarriage of justice.

Lawyers spending months preparing briefs, at enormous expense to their clients, are suddenly faced by an article in a law journal which neither side may have read, or noticed or considered worthwhile. In fact, for all we know, the justice, in a Summer mood, may himself have written the anonymous article which he now cites as authoritative. It is not a safe practice.

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Tele. Room
Mr. Holloman
Miss Gandy

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(COURT)

THE SUPREME COURT TODAY REFUSED TO REVIEW THE ONE-YEAR JAIL SENTENCE IMPOSED ON SEGREGATIONIST JOHN KASPER FOR INTERFERING WITH INTEGRATION OF THE CLINTON, TENN., HIGH SCHOOL LAST YEAR.

REJECTION OF KASPER'S APPEAL MEANS HE MUST SERVE THE ONE-YEAR IN PRISON METED OUT BY A FEDERAL DISTRICT COURT IN TENNESSEE WHICH FOUND HIM GUILTY OF CRIMINAL CONTEMPT. KASPER HAS BEEN FREE ON $10,000 BOND PENDING HIGH COURT ACTION ON HIS APPEAL.

DISPOSING OF SCORES OF CASES AT ITS FIRST WORKING SESSION OF THE NEW TERM, THE HIGH COURT ALSO REFUSED TO INTERVENE DIRECTLY IN THE EIGHT-YEAR-OLD EFFORT OF VIRGIL D. HAWKINS, A NEGRO, TO GAIN ADMISSION TO THE UNIVERSITY OF FLORIDA LAW SCHOOL. HOWEVER, IT DID TELL HAWKINS TO APPLY TO AN APPROPRIATE U.S. DISTRICT COURT FOR HELP.

THE HIGH COURT REJECTED KASPER'S APPEAL IN A BRIEF ORDER WITHOUT COMMENT.

THE COURT ALSO TOOK THESE OTHER MAJOR ACTIONS TODAY:

--AGREED TO EXAMINE THE VALIDITY OF SO-CALLED "HOT CARGO" LABOR CONTRACTS IN THE TRANSPORTATION AND BUILDING INDUSTRIES. THESE CONTRACTS PROVIDE THAT UNION MEMBERS SHALL NOT BE REQUIRED TO HANDLE NON-UNION GOODS OR GOODS FROM AN EMPLOYER WHOSE WORKERS ARE ON STRIKE. LOWER COURTS HAVE DIFFERED WHETHER SUCH CONTRACTS VIOLATE THE TAFT-HARTLEY LAW.

--REVERSED THE CONVICTIONS OF COMMUNIST LEADERS CLAUDE M. LIGHTFOOT OF CHICAGO AND EUNICE IRVINE SCALES OF GREENSBORO, N.C. THE ACTION WAS TAKEN WITH THE CONSENT OF THE JUSTICE DEPARTMENT. IT WAS BASED ON THE JENCKS DECISION WHICH THE COURT HANDED DOWN LAST SPRING. THAT DECISION HELD THAT FBI REPORTS MUST BE SHOWN TO THE DEFENSE UNDER CERTAIN CIRCUMSTANCES WHEN GOVERNMENT INFORMERS APPEAR AS WITNESSES IN CRIMINAL TRIALS. SUCH REPORTS WERE WITHHELD FROM THE DEFENSE IN THE SCALES AND LIGHTFOOT TRIALS.

--REVERSED -- ALSO WITH JUSTICE DEPARTMENT CONSENT -- THE NOT RECORDED CONTEMPT CONVICTION OF THREE PORTLAND, ORE., WITNESSES WHO REFUSED TO ANSWER QUESTIONS OF THE HOUSE COMMITTEE ON UN-AMERICAN ACTIVITIES DURING ITS 1954 HEARINGS ON COMMUNIST ACTIVITIES IN THE PACIFIC NORTHWEST. THE WITNESSES CLAIMED THE FIFTH AMENDMENT.

--DISMISSED A CHALLENGE TO THE CONSTITUTIONALITY OF A CONNECTICUT LAW WHICH PERMITS ANYONE WHO IS INJURED BY A DRUNK TO SUE THE PERSON WHO SOLD THE LIQUOR. THE COURT HELD THE APPEAL DID NOT PRESENT A SUBSTANTIAL FEDERAL QUESTION. CONNECTICUT COURTS HAVE UPHELD THE LAW.

--UPHELD THE RIGHT OF THE FEDERAL TRADE COMMISSION TO SUBPENA BOOKS OF THE FIREMAN'S FUND INDEMNITY CO. OF SAN FRANCISCO, IN CONNECTION WITH INVESTIGATION OF CHARGES THAT THE FIRM HAS PUT OUT "FALSE AND MISLEADING ADVERTISING" ON HEALTH INSURANCE CONTRACTS. THE COMPANY HAD CLAIMED THE FTC HAD NO JURISDICTION TO REGULATE HEALTH INSURANCE ADVERTISING, AND A LOWER FEDERAL COURT HAD DISMISSED THE CASE LAST FEBRUARY. THE SUPREME COURT REVERSED THE LOWER COURT AND REINSTATED THE PROCEEDINGS.

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WASHINGTON CITY NEWS SERVICE

Supreme Court

Mr. Tolson
Mr. Nichols
Mr. Boardman
Mr. Belmont
Mr. Mohr
Mr. Parsons
Mr. Rosen
Mr. Tamm
Mr. Trotter
Mr. Nease
Mr. Winterrowd
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3 Star Sports Edition

Date OCT 7 - 1957

Page 17 Col. 1

Part III

HIGHEST COURT PAMPERS REDS, OFFICIAL SAYS

Recent decisions of the United States Supreme court outrage public common sense in treating communism as merely another shade of opinion, Louis C. Wyman, New Hampshire attorney general, said last night.

"This," he said, "is to treat live coals on the living room floor as some kind of television performance—one that you watch from intellectual vantage point, but can do nothing about until a fire has started."

Wyman spoke on the Manion forum, broadcast over radio station W-G-N and the Mutual Broadcasting system. Clarence Manion, former dean of the Notre Dame law school, introduced Wyman.

Manion noted that the New Hampshire legislature directed Wyman to question a university professor who was accused of teaching communism. The professor took the 5th amendment and was upheld by the United States Supreme court.

Wyman called such decisions "distressing, disturbing, and alarming."

"I am talking," he said, "about those decisions that deny the states the right to defend themselves with criminal laws against sedition; that free communists because of an interpretation of the Smith act which legalizes advocacy of force to destroy America as long as there is no incitement to action; that deny a state the right to ask questions in aid of legislation to curb subversion in the colleges, and that open to counsel for defendants the confidential reports to the FBI of witnesses called against them.

"Far from feeling sorry for witnesses who refuse to answer relevant, courteously asked questions in the security field, it is long past time that full wrath of an aroused American people descend on those who are so contemptuous of their responsibilities of citizenship.

"The witness has only to answer to cure the record. He is not being forced to incriminate himself."

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N.Y. JOURNAL AMERICAN
OCT 2 1957

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(NY Journal American, Oct. 2)

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High Court Work Room Sacrosanct

A Justice Acts As Door Tender

By Robert J. Donovan

WASHINGTON, Oct. 6—The most impenetrable, inscrutable, impregnable sanctum in this capital is not the F. B. I. or the Secret Service or the Central Intelligence Agency or the White House.

Washington's most unapproachable holy of holies is the staid paneled conference room in the heart of the white Vermont marble building that houses the United States Supreme Court, which will convene tomorrow for its new term.

In this room year after year are hammered out decisions which have the most profound influence on the lives of the American people—rulings that affect their customs, their culture, their commerce, industry and finance, their government itself. Yet the dramas that are enacted in this room are forever shut off from the eyes of the outside world.

Sanctuary for Nine

Nine men, and nine men only, assemble in this room. If the door has to be opened to receive some message or perhaps some law book that has been sought for reference, the knock is answered by the junior justice. That is the custom, and currently the world's most distinguished and highest-paid doorman is Associate Justice Charles Evans Whittaker, erstwhile Kansas City lawyer, who took his place on the Court in March.

Because there is no glimpse into this room — not even through an occasional news "leak" — the workings of the Supreme Court have long remained a mystery to many people. Yet, though an outsider cannot know what goes on in the conference, the story of how the court works is a fairly simple one.

It will be the case by noon tomorrow, the court begins its new term each year on the first Monday in October. The opening meeting is usually perfunctory. Then during the remainder of this week the court will retire to its conference room to decide which cases it will consent to hear among a backlog of cases that have come to the court during the summer recess.

During the eight months that will follow before the next summer's recess in June, the routine will vary only slightly. Practically every Monday the court will sit publicly to hand down decisions. Monday is "decision day." Two weeks out of each month the court will also sit publicly from Tuesday through Thursday to hear arguments in the cases on the calendar.

Friday Conferences

Friday is "conference day." This is the day the nine justices meet in their sanctum off Chief Justice Earl Warren's office to make their decisions in cases great and small.

At 11 a. m. the justices, dressed in business suits, gather in the conference room, and, as is traditional, shake hands with each other. The Supreme Court is a hand-shaking place. Custom also prescribes a round of handshakes when, on Mondays, the justices enter the robing room to don their black robes for the public session.

The conference begins with the Chief Justice introducing the first case on a list of cases up for decision on the particular Friday. Without interruption he expresses his opinion. Then he yields to the senior associate justice, currently Justice Hugo L. Black, who gives his views and in turn yields to the next in order of seniority and so on down the line. On this first run-down each justice is allowed to express himself uninterruptedly until, finally, the junior justice has had his say. Then the issue is thrown open for argument. This is the moment when the interplay of personalities, the clash of philosophies, the exercise of legal knowledge come to a climax in the Supreme Court.

Vote Ends Debate

When the Chief Justice finds that the debate has run its course, he calls for a vote. As a device to keep the newer members from being unduly influenced by the vote of their seniors, the voting begins with the junior justice and continues on up in order of seniority to the Chief Justice.

The case has now been decided, and the next step, if the particular case calls for it, is to produce a written opinion. If the chief justice votes with the majority he assigns the task. He may, if he chooses, assign it to himself, as Justice Warren did in the historic school segregation case in 1954.

If the Chief Justice is in the minority, the task of making the assignment falls to the senior justice on the majority side.

Chief Justice Warren has no rule-of-thumb for assigning the writing of an opinion. For one thing, he takes care not to overload any one justice. On the other hand, he tries to arrange for each justice to have his fair share of important opinions.

Unanimity Sought

Probably the most important consideration with Chief Justice Warren as with his predecessors, however, is to assign the job to the justice he feels is most likely to produce an opinion that will command the greatest degree of unanimity.

With the aid of his talented law clerks, the justice who gets the assignment writes the opinion and circulates it among his colleagues.

"Then the fur begins to fly," Associate Justice Tom Clark related recently. "Returns come in—some favorable and many otherwise. In controversial cases . . . the process often takes months . . . the final form of the opinion is agreed upon at the Friday conferences."

It is handed down on a succeeding Monday. Any minority justice who wishes may write a dissenting opinion.

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Supreme Court Opens Term As Calm Center of Turmoil

By Morrey Dunie
Staff Reporter

All was calm and tradition yesterday as the Supreme Court of the United States opened its 1957-58 term.

While controversy raged about the tribunal's decisions of recent years, the Court itself appeared to be a placid center of great turbulence.

The only order of business the first day in the marble-columned, heavily draped chamber was the admission of 49 lawyers to practice before the Court, but documents were filed portending other possibly controversial decisions.

The nine justices are faced with an unusually heavy docket of some 800 cases and they have already agreed to hear arguments in 113 cases. Even before the Court decides which additional arguments it will hear, it has a workload approaching the 123 cases heard in the last term.

One of the cases that the Court must decide whether or not to hear involves the Virginia Pupil Placement Act, part of the State's program for keeping its schools segregated.

Lower Federal courts found the Act to be unconstitutional and Virginia appealed. If the Supreme Court refuses to review the case, the lower court decisions stand.

However, the Virginia Attorney General's office asked the Supreme Court yesterday to withhold determination of the matter until the State's highest tribunal has an opportunity to rule on the same question in a different case.

The State court is scheduled to hear a case bearing on the Pupil Placement Act this week, with a decision expected early in December.

Should the Supreme Court withhold any action until the State court rules, the final decision on whether the placement law is valid would not be rendered until after Virginia's hotly contested gubernatorial election.

School segregation is the main issue in the gubernatorial race in Virginia.

In two cases pending before the Supreme Court, "friend of the court" briefs were placed with the court clerk yesterday. Attorneys who said they represent 5300 persons asked the Court to review the case of Morton Sobell, imprisoned for atomic espionage.

Sobell was sentenced to 30 year's imprisonment and is now in Alcatraz. He was convicted with Ethel and Julius Rosenberg, the atomic spies who were executed in 1953.

The Court, which agreed last May to review the contempt conviction and $100,000 fine imposed on the National Association for the Advancement of Colored People by the State of Alabama, also received a "friend of the court brief" in this case.

Lawyers representing 14 national organizations asked permission to intervene on behalf of the NAACP.

If the opposition in both the Sobell and NAACP cases do not object to the briefs, they are filed in the Court. If there are objections, however, the Court decides whether the filings should be permitted.

There are other cases in the segregation and subversive fields pending in the Court. But the Court was not called upon in its opening day to make any pronouncements.

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Today in World Affairs

Vishinsky Quoted on Role Of Supreme Court in U. S.

By DAVID LAWRENCE

WASHINGTON, Oct. 8.—"What will the Russians think of us?" has become a watchword in American affairs, and lately the Moscow press itself—ignoring the Soviet's own segregation practices—has been pointing its barbs at America's racial troubles in the schools of Arkansas.

But the real criticism that has been voiced in scholarly circles in Soviet Russia is against what is termed the dictatorial function of the Supreme Court of the United States—the right of a judicial oligarchy to interpret statutes as it pleases.

Lawrence

Typical of these comments is the caustic analysis made of the Supreme Court of the United States in the monumental work of the late Andrei Vishinsky—once Soviet Deputy Foreign Minister but more famous for his career as a jurist. His book, "The Law of the Soviet State," published by the Macmillan Co. of New York in co-operation with the American Council of Learned Societies, is the fundamental textbook of the universities and law schools in Soviet Russia. It was selected for translation primarily because it is the basis of most of the legal argument and mode of thinking which Americans encounter in their discussions with representatives of the Soviet Union.

Vishinsky Quoted

Here is what Vishinsky wrote during the course of his analysis of the legal systems of various countries:

"In bourgeois countries the right to interpret statutes is in most cases appropriated to organs not responsible to parliament. Thus, in the United States of America, according to the theory of so-called 'separation of powers,' the courts are granted the right to interpret statutes or, in simple words, to control acts of Congress in respect of their conformity with the meaning of the Constitution. If a statute of a single paragraph thereof is admitted to be in conflict with the Constitution, it is declared unconstitutional, and therefore inoperative, by the court, and no rights can for the future be based upon it. Thus, the rights of the Supreme Court are opposed to the rights of the Congress representing 'the will of the people.'

"In the United States of America neither the Constitution nor the laws of Congress, but the interpretations and constructions of statutes by the Supreme Court, are in fact—in most matters—the operative rule. Constitutional control by the Supreme Court of the United States thus in fact creates new legislation.

Russian Court

"Moreover, it must be noted that judges opposed to Congress are nominated by the President, with the assent only of the Senate; the house of Representatives has no part in the appointment of judges."

In the Soviet Union, its own Supreme Court has purely judicial functions, with no power

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to interpret the Constitution or statutes. The final power of legislation, interpretation and constitutional amendment is in the Presidium of the Supreme Soviet, a group of thirty-seven members elected by the Soviet Parliament. Vishinsky contends that the people, therefore, directly control their own destiny. One could argue with him that the Presidium is a dictatorship and only theoretically responsible to the people. But the answer any Soviet scholar probably would give today is that in America nine men, constituting a judicial dictatorship, set forth "the supreme law of the land" and the people have nothing to say about it except through the long and cumbersome process of amending the Constitution to correct the error of a Supreme Court decision.

Justice Reed's Stand

Just the other day Stanley Reed, retired Justice of the Supreme Court of the United States and one of the nine who handed down the "desegregation" decisions of 1954, made a speech before the California State Bar Association in which he outlined the remedies against a wrong decision by the Supreme Court of the United States. He indicated clearly that such a decision is not necessarily the final word, and declared:

"The civil-rights decisions of the Supreme Court have called forth harshly worded criticism. The objections proceed chiefly from those whose judicial philosophy differs from that of the court majorities, but criticism is one thing that the First Amendment does not forbid. Fortunately, wrong decisions are not irremediable. The overruling of constitutional decisions when their error becomes apparent is essential."

Justice Reed went on to say there is nothing new in such criticism of the Supreme Court and he quoted Thomas Jefferson, Andrew Jackson and Abraham Lincoln. In his first inaugural address, Lincoln said:

"While it is obviously possible that such decision (of the Supreme Court) may be erroneous in any given case, still the evil effect following it, being limited to that particular case, with the chance that it may be overruled and never become a precedent for other cases, can better be borne than could the evils of a different practice."

Yet there are those who insist that whatever the Supreme Court says is final and irrevocable and is "the law of the land," instead of "the law of the case." What Americans need to know is more about their own institutions and the weaknesses thereof as viewed by our own statesmen in history as well as by jurists abroad.

SUPREME COURT RULINGS CRITICIZED BY BAR ASSOCIATION COMMITTEE

A committee of the American Bar Association looks at recent Supreme Court rulings and raises these questions:

- **Is the Court leaning too far backward in defending theoretical rights of Communists?**
- **Are the Court's decisions tying the hands of the U. S. Government against Communism?**

To overcome the effects of the Court's rulings, new legislation is suggested.

This study comes from the American Bar Association's Committee on Communist Tactics, Strategy and Objectives. It is presented here by Committee Chairman Herbert R. O'Conor, former U. S. Senator from Maryland.

Following are excerpts from a report made to the 80th annual meeting of the American Bar Association on July 25, 1957, by former Senator Herbert R. O'Conor, chairman of the Association's Committee on Communist Tactics, Strategy and Objectives:

MR. O'CONOR

Modern history is filled with the wrecks of republics which were destroyed from within by conspiracies masquerading as political parties. The nine justices of the Supreme Tribunal of Germany refused to see that the Nazis were a conspiracy against the very existence of the German Republic. The Kerensky Government of Russia thought it could tolerate and coexist with the Communist conspirators. The Communists responded to this toleration by disbanding the Constituent Assembly at bayonet point and destroying the newborn republic of Russia. The republics of Czechoslovakia, Poland and China tried valiantly to coexist with the Communist Party in their midst, but were unable to do so.

We are spending more to equip and defend ourselves and our allies from Communist aggression than we ever spent to stop Japanese aggression. The Japanese found it difficult to purloin our military secrets, but the Communists have stolen many of our military secrets, including vital details of the atomic and hydrogen bombs which were known to the traitors Dr. Klaus Fuchs and Dr. Bruno Pontecorvo.

The cynical cruelty with which the Kremlin crushed the Hungarian patriots and executed their leaders is proof by deeds that "the spirit of Geneva" was always a tactic and a sham. Likewise, the admission of Mao Tse-tung in his recently published Peiping speech of February, 1956, that the Chinese Communists completed the "liquidation" of 800,000 persons between October, 1949, and January, 1954, and the report published June 15, 1957, by the Senate Internal Security Subcommittee that, in fact, more than 15 million persons have been executed in Red China since 1951 prove the fatuity of those who argue that Red China should be admitted into the family of nations and recognized by our Government.

The Communists have conquered large areas of the world according to a carefully enunciated plan. In 1903, Lenin established Communism with 17 supporters. In 1917, the Communists conquered Russia with 40,000. In 1957, the Communists are in iron control of 900 million people. Their advance since the end of World War II has been especially tragic.

The Korean war proved that aggression does pay because it was followed by Communist aggression in Tibet, Indo-China and Hungary. After Soviet tanks rolled into Hungary, the Communists succeeded by clever propaganda in electing their first government by forms of democratic processes—in the state of Kerala, in India. To the Communists "peaceful co-existence" means Communist conquest without war.

The greatest asset the Communists have at the present time is not the hydrogen bomb, certainly not Soviet satellites, but world ignorance of their tactics, strategy and objectives. The biggest need today is for the free peoples to develop an awareness of the menace of Communism and the ability to isolate the Communist line so that it can be detected no matter who utters it. One speech from the mouth of an important American innocent can be worth a truckload of "Daily Workers" in advancing the international Communist conspiracy. The current Communist line includes the following:

1. Repeal or weaken the anti-Communist legislation on the books, especially the Smith Act, the Internal Security Act, and the Subversive Activities Control Act.
2. Discredit and hamper the Senate Internal Security Subcommittee, the House Un-American Activities Committee, and State officials investigating Communism.
3. Weaken the effectiveness of the FBI and reveal its sources of information.
4. Destroy the federal security system.
5. Recognize Red China and admit her to the United Nations.
6. Oppose the possibility of the United States' breaking off diplomatic relations with Soviet Russia.

(Continued on page 136)

. . . Court rulings "affect right of U.S. to protect itself"

7. Enlarge East-West trade, especially in items in short supply behind the Iron Curtain.

8. Revive the idea that the Communist Party is just another political party.

9. Use the recent shake-up in the Kremlin as a guise to revive the Communist peace offensive, just as a previous shake-up in the Kremlin brought about the "spirit of Geneva."

Decisions in 15 Cases—

In the last 15 months the United States Supreme Court has decided 15 cases which directly affect the right of the United States of America to protect itself from Communist subversion:

1. *Communist Party v. Subversive Activities Control Board*

The Court refused to uphold or pass on the constitutionality of the Subversive Activities Control Act of 1950, and delayed the effectiveness of the Act.

2. *Pennsylvania v. Steve Nelson*

The Court held that it was unlawful for Pennsylvania to prosecute a Pennsylvania Communist Party leader under the Pennsylvania Sedition Act, and indicated that the antisedition laws of 42 States and of Alaska and Hawaii cannot be enforced.

3. *Fourteen California Communists v. United States*

The Court reversed two federal courts and ruled that teaching and advocating forcible overthrow of our Government, even "with evil intent," was not punishable under the Smith Act as long as it was "divorced from any effort to instigate action to that end," and ordered five Communist Party leaders freed and new trials for another nine.

4. *Cole v. Young*

The Court reversed two federal courts and held that, although the Summary Suspension Act of 1950 gave the Federal Government the right to dismiss employes "in the interest of the national security of the United States," it was not in the interest of the national security to dismiss an employe who contributed funds and services to a not-disputed subversive organization, unless that employe was in a "sensitive position."

5. *Service v. Dulles*

The Court reversed two federal courts which had refused to set aside the discharge of [John Stewart] Service by the State Department. The FBI had a recording of a conversation between Service and an editor of the pro-Communist magazine "Amerasia," in the latter's hotel room in which Service spoke of military plans which were "very secret." Earlier the FBI had found large numbers of secret and confidential State Department documents in the "Amerasia" office. The lower courts had followed the McCarran amendment which gave the Secretary of State "absolute discretion" to discharge any employe "in the interests of the United States."

6. *Slochower v. Board of Education of New York*

The Court reversed the decisions of three New York courts and held it was unconstitutional to automatically discharge a teacher, in accordance with New York law, because he took the Fifth Amendment when asked about Communist activities. On petition for rehearing, the Court admitted that its opinion was in error in stating that Slochower was not aware that his claim of the Fifth Amendment would *ipso facto* result in his discharge; however, the Court denied rehearing.

7. *Sweezy v. New Hampshire*

The Court reversed the New Hampshire Supreme Court and held that the Attorney General of New Hampshire was without authority to question Professor Sweezy, a lecturer at the State University, concerning a lecture and other suspected subversive activities. Questions which the Court said that Sweezy properly refused to answer included: "Did you advocate Marxism at that time?" and "Do you believe in Communism?"

8. *United States v. Witkovich*

The Court decided that, under the Immigration and Nationality Act of 1952, which provides that any alien against whom there is a final order of deportation shall "give information under oath as to his nationality, circumstances, habits, associations and activities and such other information, whether unrelated to the foregoing, as the Attorney General may deem fit and proper," the Attorney General did not have the right to ask Witkovich: "Since the order of deportation was entered in your case on June 25, 1953, have you attended any meetings of the Communist Party of the U.S.A.?"

9. *Schware v. Board of Bar Examiners of New Mexico*

The Court reversed the decisions of the New Mexico Board of Bar Examiners and of the New Mexico Supreme Court which had said:

"We believe one who has knowingly given his loyalties to the Communist Party for six to seven years during a period of responsible adulthood is a person of questionable character."

The Supreme Court substituted its judgment for that of New Mexico and ruled that "membership in the Communist Party during the 1930s cannot be said to raise substantial doubts about his present good moral character."

10. *Konigsberg v. State Bar of California*

The Court reversed the decisions of the California Committee of Bar Examiners and of the California Supreme Court and held that it was unconstitutional to deny a license to practice law to an applicant who refused to answer this question put by the Bar Committee: "Mr. Konigsberg, are you a Communist?" and a series of similar questions.

Opening "Confidential Files"

11. *Jencks v. United States*

The Court reversed two federal courts and held that Jencks, who was convicted of filing a false non-Communist affidavit, must be given the contents of all confidential FBI reports which were made by any Government witness in the case even though Jencks "restricted his motions to a request for production of the reports to the trial judge for the judge's inspection and determination whether and to what extent the reports should be made available."

12. *Watkins v. United States*

The Court reversed the Federal District Court and six judges of the Court of Appeals of the District of Columbia, and held that the House Un-American Activities Committee should not require a witness who admitted, "I freely co-operated with the Communist Party" to name his Communist associates, even though the witness did not invoke the Fifth Amendment. The Court said: "We remain unenlightened as to the subject to which the questions asked petitioner were pertinent."

13. *Raley, Stern and Brown v. Ohio*

The Court reversed the Ohio Supreme Court and lower courts and set aside the conviction of three men who had refused to answer questions about Communist activities put to them by the Ohio Un-American Activities Commission.

14. *Flaxner v. United States*

The Court reversed two federal courts and set aside the conviction of Flaxner of contempt for refusing to produce records of alleged Communist activities subpoenaed by the Senate Internal Security Subcommittee.

15. *Sacher v. United States*

The Court reversed two federal courts and set aside the

. . . "It is surely proper to investigate Communists"

conviction of Sacher of contempt for refusing to tell the Senate Permanent Investigations Subcommittee whether he was or ever had been a Communist.

The Communist "Daily Worker" described the effect of these decisions as follows:

"The Court delivered a triple-barreled attack on (1) the Department of Justice and its Smith Act trials; (2) the free-wheeling congressional inquisitions; and (3) the hateful loyalty-security program of the Executive. Monday, June 17, is already a historic landmark. . . . The curtain is closing on one of our worst periods."

The Watkins case decided that it is not "pertinent" for a congressional committee, established for the investigation of un-American activities, to ask a witness to give information concerning persons known to him to have been members of the Communist Party.

How Questioning Is Limited

The courts have repeatedly said: "The power to legislate carries with it by necessary implication ample authority to obtain information needed in the rightful exercise of that power, and to employ compulsory process for that purpose."

Although many people consider the congressional investigations into Communism by the House Un-American Activities Committee [which was a particular target of the Watkins opinion] and the Senate Internal Security Subcommittee [which was ruled against in the subsequent decision of *Flaxner* v. U. S.] may be considered as primarily the information type of inquiry, they have resulted in a considerable quantity of important legislation. This includes the Smith Act, the Subversive Activities Control Act of 1950, the Internal Security Act of 1950, the Summary Suspension Act of 1950, certain sections of the McCarran-Walter Immigration Act, the Immunity Act of 1954, the Communist Control Act of 1954 and considerable State legislation such as the United States Supreme Court-approved New York Feinberg and Maryland Ober laws. . . .

The repeal or the weakening of these anti-Communist laws and committees is in the forefront of the program of the Communist Party of the United States.

Until the Watkins case, the Court had never interfered with the work of the House Un-American Activities Committee, and had on four occasions specifically refused to set aside contempt convictions imposed on witnesses who balked at testifying before this Committee.

Until the Watkins case, the Court had upheld the information function of legislative committees, and had always refused to interfere with the work of congressional committees investigating Communism. In a unanimous decision which was considered for more than two years before its pronouncement, the Supreme Court said:

"A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to effect or change; and where the legislative body does not itself possess the requisite information—which not infrequently is true—recourse must be had to others who do possess it."

In defending the congressional power to investigate the Teapot Dome scandals, Mr. Justice Felix Frankfurter (then a professor) wrote:

"The question is not whether people's feelings here and there may be hurt, or names 'dragged through the mud' as it is called. The real issue is whether . . . the grave risks of fettering free congressional inquiry are to be incurred by artificial and technical limitations upon inquiry . . . the abuses of the printing press are not sought to be corrected by legal restrictions or censorship in advance because the remedy is worse than the disease. For the same reason, congressional inquiry ought not to be fettered by advance rigidities because, in the light of experience, there can be no reasonable doubt that such curtailment would make effective investigations almost impossible . . . the power of investigation should be left untrammeled."

In defending the congressional power to investigate the abuses of business, Mr. Justice Hugo L. Black (then a Senator) wrote:

"Witnesses have declined to answer questions from time to time. The chief reason advanced has been that the testimony related to purely private affairs. In each instance with which I am familiar the House and Senate have steadfastly adhered to their right to compel reply, and the witness has either answered or been imprisoned. . . .

"Public investigating committees . . . have always been opposed by groups that seek or have special privileges. That is because special privilege thrives in secrecy and darkness and is destroyed by the rays of pitiless publicity."

In refusing to enjoin Senator Black's lobby-inquiry committee from what was widely charged to be improper use of the congressional power of exposure, the Court said: "It is legislative discretion which is exercised, and that discretion, whether rightfully or wrongfully exercised, is not subject to interference by the judiciary."

If it is proper for congressional committees to investigate businessmen, it is surely proper to investigate Communists. If congressional inquiry into dishonesty "ought not to be fettered by advance rigidities," neither should congressional inquiries into disloyalty.

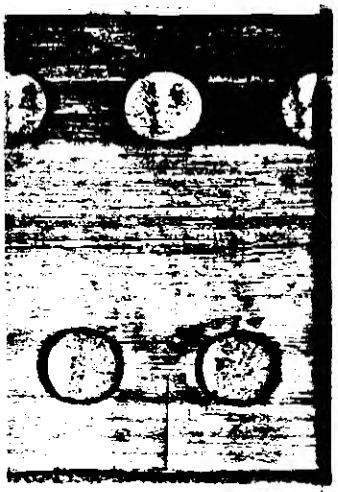
The Watkins opinion points to the Royal Commissions of Inquiry as something to be imitated by congressional committees because of the commissions' "success in fulfilling their fact-finding missions without resort to coercive tactics."

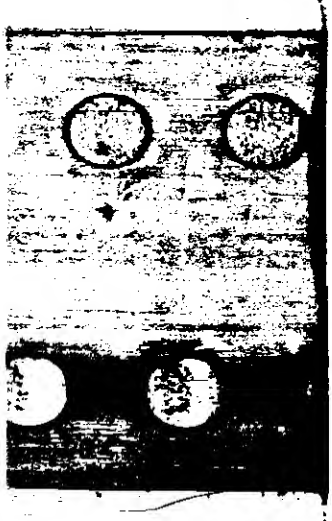
Canadian Law and Communists

The report of the Canadian Royal Commission on Espionage, which was created on Feb. 5, 1946, to investigate the charges of Igor Gouzenko, and which is the Royal Commission most nearly comparable in purpose to the House Un-American Activities Committee, reveals the following differences between the methods used by a Royal Commission investigating subversion, and the methods used by a congressional committee investigating subversion:

1. A Royal Commission can arrest and jail witnesses. A congressional committee has no such power.
2. A Royal Commission can hold witnesses without bail and incommunicado for many days and until after they are questioned. A congressional committee has no such power.
3. A Royal Commission can compel witnesses to testify and impose sanctions for refusing to testify. It does not recognize a "fifth amendment" or privilege against self incrimination, as do our congressional committees.
4. A Royal Commission can have its police agents search witnesses' homes and seize their papers. A congressional committee has no such power.
5. A Royal Commission may forbid a witness to have his lawyer present at the hearing. Congressional committees

. . . New laws should be passed to "safeguard the FBI files"





permit a witness to have his lawyer present and even to consult with him before answering each specific question.

6. A Royal Commission can require all concerned in the inquiry, including witnesses, to take an oath of secrecy. The questioning by the Commission can be secret and, since only selected excerpts from the testimony are then made public, it is impossible to know whether a fair selection was made. Most congressional committee hearings are public and open to the press.

7. A Royal Commission is not subject to or under the control of the courts, Parliament or the Cabinet, and a Commission "is the sole judge of its own procedure." Congressional committees are completely subject to Congress, and they need the assistance of the courts in dealing with contemptuous witnesses.

We do not approve, or urge, all of the foregoing practices, but cite them to show what other freedom-loving nations do to protect their security.

What Legislation Is Necessary

Our Committee deems the bill introduced to overcome the effect of the Steve Nelson decision to be in the public interests. Serious consideration must be given to legislation which will:

1. Safeguard the confidential nature of the FBI files;
2. Give to congressional committees the same freedom to investigate Communists and pro-Communists that these committees have always had to investigate businessmen and labor leaders;
3. Sanction the right of the Federal Government to discharge security risks even though they occupy so-called nonsensitive positions;
4. Vest in the Department of Justice the right to question aliens awaiting deportation about any subversive associations and contacts;
5. Correct the notion that the Smith Act was not intended to prohibit advocacy and teaching of forcible overthrow as an abstract principle;
6. Permit schools, universities, bar associations and other organizations to set standards of membership high enough to exclude those who refuse to testify frankly and fully about their past activities in furtherance of Communist plans to conquer the free world by subversion.

In recent weeks the New York "Daily Worker" has been replete with articles and editorials proclaiming that the usefulness of FBI informants in future prosecutions has been destroyed; that the Smith Act is now ineffective and for all practical purposes invalidated; that the effectiveness of congressional inquiries into subversive activities has been curtailed and that the Government loyalty-security program is under serious attack. In reporting on its current fund drive the "Daily Worker" has stated it has experienced an enlivening of contributions which it attributed to renewed hope by its supporters for its future.

The reaction of the Communist Party to the recent Supreme Court decisions clearly depicts the resilience of the organization and the speed with which its leadership recognizes an advantage and presses to capitalize to the fullest extent on circumstances conducive to the growth of the organization.

Some Americans may wonder whether an organization the size of the Communist Party, U.S.A., with a consistent decline in membership in recent years, represents a danger to the security of this country. It must be remembered that numbers alone do not mean everything. The party has never boasted of a large membership but rather has continually endeavored to confine its membership to hard-core members who have adhered to Communist discipline down through the years and who can be relied upon to carry out the party's orders without question.

Our Committee believes that special mention should be made of the June 3, 1957, decision of the United States Supreme Court in *Jencks v. United States* and legislation subsequently introduced in Congress to define the scope of the rule announced by the Court in that case.

In the Jencks case the Court held that one accused by the United States of a criminal offense is entitled to inspect, for purposes of impeachment, prior statements and reports which the prosecution witnesses had previously made to the Government and which touch upon the subject of their testimony at the trial. Further, the defense need not first lay a foundation of inconsistent testimony in order to obtain production of these documents.

We are in firm agreement with the Court's view that the accused's right to make an adequate defense must not be jeopardized by an arbitrary withholding of pertinent documents by the prosecution.

We are equally strong in our belief, however, that the rules by which these documents are produced should be defined with sufficient restriction that one accused of subversion against this nation and its people will not be allowed to rummage at will through Government documents containing confidential information important to the national security and of no relevance whatever to the defense of the accused. There is danger of such a result.

"Grave Emergency" From Ruling

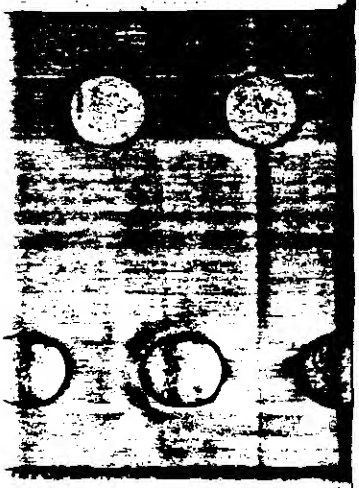
The Attorney General himself testified before the Congress only recently, declaring that a grave emergency resulted from the Supreme Court decision in the Jencks case. He asserted that some trial courts have interpreted the Jencks decision to require that the Government submit to the defense not only those reports and statements specified by the Supreme Court, but also the investigative report of the case, much of which is neither relevant nor material to the defense of the accused.

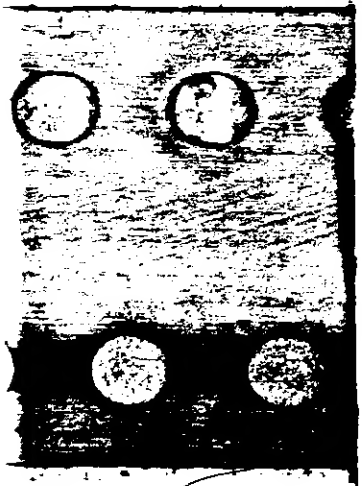
We believe the effect of such interpretations is to weaken immeasurably the proper and necessary defenses of society, without granting to the accused any additional information which he rightfully needs to make his defense. We also point out that the investigative reports sometimes contain the names of third persons who originally were linked to the case in a manner subsequently found to be innocent. To release the names of these innocent people from the bond of Government secrecy would not promote the interests of justice. On the contrary, it would be injustice of the rankest sort.

Accordingly we believe that a firm stand should be taken in support of legislation, already introduced in the Congress, which would recognize the rights of the accused as defined by the Supreme Court in the Jencks decision, but at the same time prohibit those rights from being used by criminals and subversives as a lever to pry out of the Government files information to which they are not entitled and the release of which can serve no purpose but to jeopardize the rights of innocent persons and the public at large.

Your Committee calls attention to the report to the Congress which was recently made by the Commission on Government Security, of which Loyd Wright, past president of the

. . . There's danger "that we have tied hands of our country"





American Bar Association, is chairman. This report points out the critical situation with respect to national security. We urge the careful study and consideration of this report by the lawyers of our country and, further, that the efforts to strengthen our internal-security defenses have wholehearted support and co-operation.

Efforts to "Achieve Security"

Chairman Wright, his fellow members of the Commission on Government Security, the advisory group and staff of the Commission are entitled to the commendation and gratitude of the citizenry for their monumental undertaking, which has been so efficiently and painstakingly performed. It is heartening to note the unselfish efforts exerted by Chairman Wright and his colleagues to achieve the desired goal of Government security, at the same time safeguarding the legitimate interests of everyone involved in the considerations of Government security.

This committee again commends President George Meany of the AFL-CIO for his prompt detection of the current Communist line and his warnings to his fellow Americans of the folly of trying to do business with a government which has violated every agreement that it ever signed.

We also commend Mr. Albert Hayes, of the International Association of Machinists, for promptly dismissing three organizers who took the Fifth Amendment when asked by the Senate Internal Security Subcommittee about their Communist activities. It is hoped that leaders in other fields of American life will react with equal courage to current Communist tactics.

We desire to record emphatically our approval of the organization and functioning of the two congressional committees, which have given special attention to the problem of subversive activities, namely: the Senate Internal Security Committee and the House Un-American Activities Committee. It is our considered opinion, for close observation of the work of these two groups, that they have rendered immeasurable service to the American people and that their operations have been of inestimable value in the defense of our country against those who would undermine our basic institutions.

It is also our privilege to comment upon the painstaking and intelligent efforts of the Federal Bureau of Investigation. Under the able leadership of Director J. Edgar Hoover, this devoted group has become a tower of strength in the all-out effort to detect and to apprehend subversion, among their other important undertakings. We praise their work and urge the American people to give continuous aid and provisions to uphold and support the operation of this protective agency.

• • •

Lawyers, by training and tradition, know and appreciate the vital importance of an independent judiciary. Wherever we find it, we respect it. Where the independence is exercised with courage and soundness, we revere it—for then we have justice under law. Our training has also given us, and we must impart the benefit of it to the American people, a tolerance and an understanding of difference of viewpoint.

The judicial branch is one of the three cornerstones of our constitutional government—and the ultimate determinant of our individual rights but, as we said in our brief to the Supreme Court in the Communist Party case, "There can be no individual rights or freedoms without national security."

For the reason that our Committee has been charged with the duty of studying the problems caused by international Communism and we have observed the Communist tactics and realized the danger to American life and to the free world, we must urge an unremitting effort to maintain a judicial system which will ever function as impartial, resolute and vigilant. There must ever be one standard of justice under law for both high and low, for those who are accused of serious offenses as well as for lesser crimes.

There must never be different and varying standards for determination of rights or duties or violations applicable to cases involving Communist problems as compared to other issues.

It must be remembered that it is one of the cardinal policies of the Communist movement not to be concerned with actions, proceedings, charges or indictments so much as their ultimate determination and consequences. For that reason, the strategy of delay is employed by them in every case and at every stage.

It should not happen that sound and established concepts of law and standards are disregarded and different standards employed simply because the problem involved Communist activity. To conjure hypothetical fears not involved in a case submitted for determination is neither sound judicial administration nor good government. Again, to quote from our brief in the Communist Party case, may we repeat, "Where no constitutional or statutory provision is violated, the Courts are no more immune from the duty to safeguard the nation than is the Congress or the President."

The criterion of justice must in this country be high—but it must be human—and cannot be perfect. We believe and shall always strive for the same high standard of justice for any Communist or Communist organization as for any loyal American citizen or any legal entity, but likewise, we will deplore special and extraordinary treatment for Communists or Communist organizations.

The momentous and dangerous times in which we live present serious problems to every branch of Government and entail sacred responsibilities. It is imperative that our bench and bar must be sound as well as courageous, realistic as well as idealistic.

The desire to preserve liberty, in all its forms and the absolute necessity of protecting our countries and our families from international Communism pose a problem that is admittedly very difficult. On the one hand, England and the United States have for centuries cherished the ideal that uniformity of opinion among the citizens is neither desirable nor obtainable; on the other hand, we are not so blind as to think that Communism is merely another shade of political opinion.

The dilemma that confronts our two countries is monumental.

Needed: "Proper Balance"

The duty of the bar to play an important part in finding a solution to the dilemma is self-evident. We must strive to find the proper degree of balance between liberty and authority.

It is traditional and right that our courts are zealous in protecting individual rights. It is equally necessary that the executive and legislative branches take effective action to gird our country in defense against Communist infiltration and aggression.

If the courts lean too far backward in the maintenance of theoretical individual rights, it may be that we have tied the hands of our country and have rendered it incapable of carrying out the first law of mankind—the right of self-preservation. [END]

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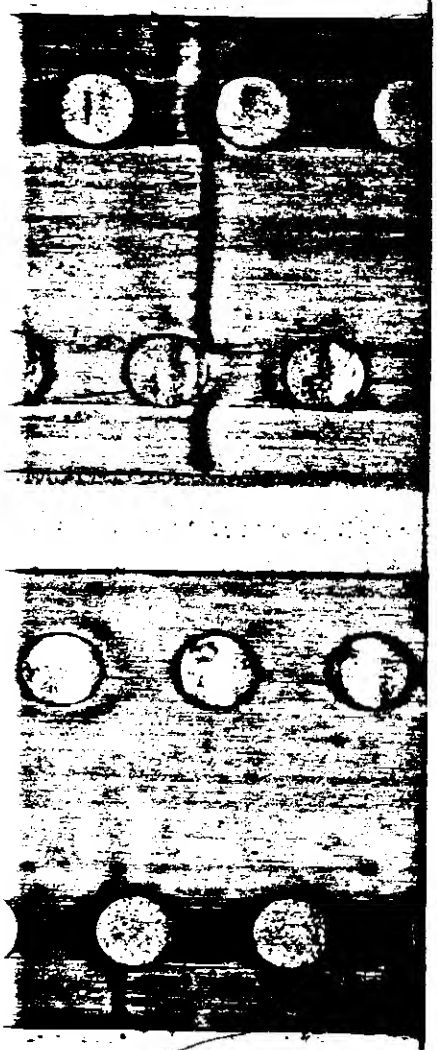

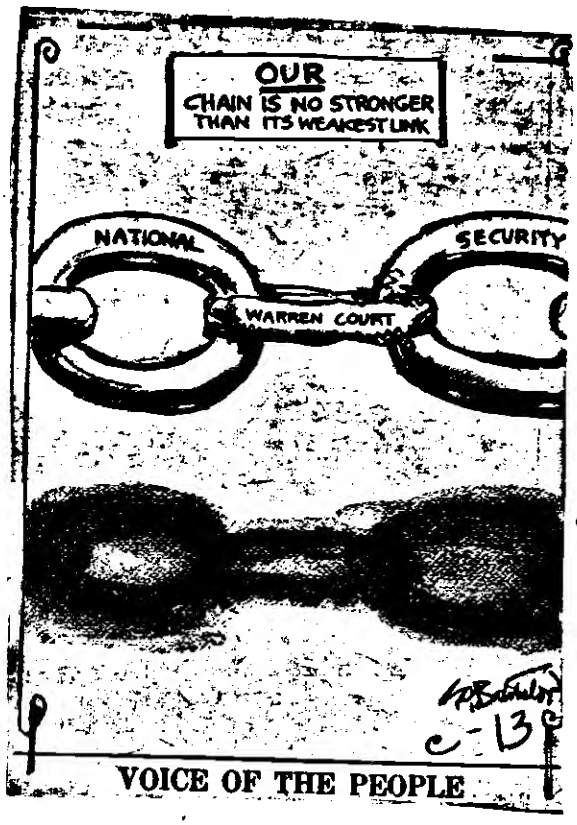

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Mr. Nichols
Mr. Boardman
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COURT FAVORS OUR FOES

The Supreme Court of the United States opened its 1957-58 session this week on an old familiar note: It set aside the convictions of more Communist leaders.

Junius I. Scales and Claude M. Lightfoot, sentenced to prison terms of six and five years, respectively, for violating the Smith Act, were freed by the Supreme Court on grounds they were denied access to FBI files during their trials.

The Supreme Court based this action on a decision of last June in which it ruled that a defendant must be given access to FBI reports used as the basis for testimony by prosecution witnesses.

The FBI relies a great deal on tips provided by confidential informants, and this decision threatened to hamstring FBI investigations and endangered the lives of persons who give information to the agency.

Congress passed a law in August to help protect FBI files against indiscriminate perusal by defendants, but the court said the new law did not affect Scales and Lightfoot because they were tried more than two years ago.

In another decision this week, the Supreme Court set aside the contempt conviction of Willard Uphaus, who refused to answer questions during an investigation of subversive activities in New Hampshire conducted by Louis C. Wyman attorney general in that State.

The Supreme Court referred to its decision of last June that reversed the contempt conviction of Paul M. Sweezy, professor of economics at the University of New Hampshire, on similar charges.

Some Americans wonder how much longer the United States can survive if the Supreme Court continues to rule in favor of enemies of this country.

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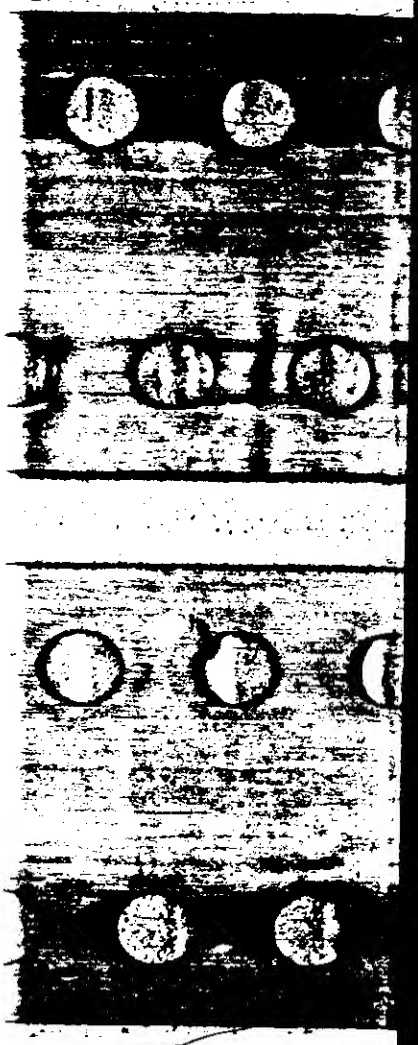


Former Justice Reed Says:

SUPREME COURT DECISIONS ARE NOT ALWAYS THE LAST WORD

Now, at a time when the Supreme Court's integration ruling is being criticized, comes this suggestion by a former Court member: "Wrong decisions" by the Supreme Court are not necessarily final. They can—and should—be changed.

Following are excerpts from an address by Stanley F. Reed, retired Associate Justice of the U. S. Supreme Court, before the State Bar of California in Monterey, Calif., Oct. 3, 1957.

One needs no citation of authority to assert that it is doubly difficult to secure a judgment by the Supreme Court overruling a former judgment on constitutional questions. . . .

Occasionally other means than amendments are available to overcome constitutional decisions contrary to purposes desired by the people. . . .

The nation has accepted the conclusion that the better way, when constitutionality of action is doubtful, is to exercise other admitted powers of legislation or to use the authority of administration or to proceed by litigation, so that the test of constitutionality may arise in a judicial proceeding. . . .

The Court has avoided the impasse of unconstitutionality by overruling prior constitutional decisions, explicitly or by implication. . . .

Indeed, considering the difficulties of constitutional amendment, the rule of *stare decisis* ["to stand by decisions"] would not do for such decisions. The dead would rule the living. . . .

The civil-rights decisions of the Supreme Court have called forth harshly worded criticism. The objections proceed chiefly from those whose judicial philosophy differs from that of the Court majorities, but criticism is one thing that the First Amendment does not forbid. Fortunately, wrong decisions are not irremediable. The overruling of constitutional decisions when their error becomes apparent is essential.

There is nothing new in such criticism. Jefferson wrote in 1820 to Jarvis: "You seem to consider the judges as the ultimate arbiters of all constitutional questions, a very dangerous doctrine indeed, and one which would place us under the despotism of an oligarchy." . . .

And said of Marbury v. Madison: "Yet the case of Marbury and Madison is continually cited by bench and bar as if it were settled law, without any animadversion on its being merely an obiter dissertation of the Chief Justice."

In the bank fight following M'Culloch v. Maryland, upholding the validity of the charter of the Bank of the United States, President Jackson gave his views. On July 10, 1832, in a message to Congress, he said:

"If the opinion of the Supreme Court covered the whole ground of this act, it ought not to control the co-ordinate authorities of this Government. The Congress, the Executive, and the Court must each for itself be guided by its own opinion of the Constitution. . . . The opinion of the judges has no more authority over Congress than the opinion of Congress has over the judges, and on that point the President is independent of both. The authority of the Supreme Court must not, therefore, be permitted to control the Congress or the Executive when acting in their legislative capacities, but to have only such influence as the force of their reasoning may deserve."

. . . One hundred years ago last July, Abraham Lincoln denounced the Dred Scott decision and called for its overruling. "Somebody has to reverse the decision, since it is made, and we mean to reverse it, and we mean to do it peaceably."

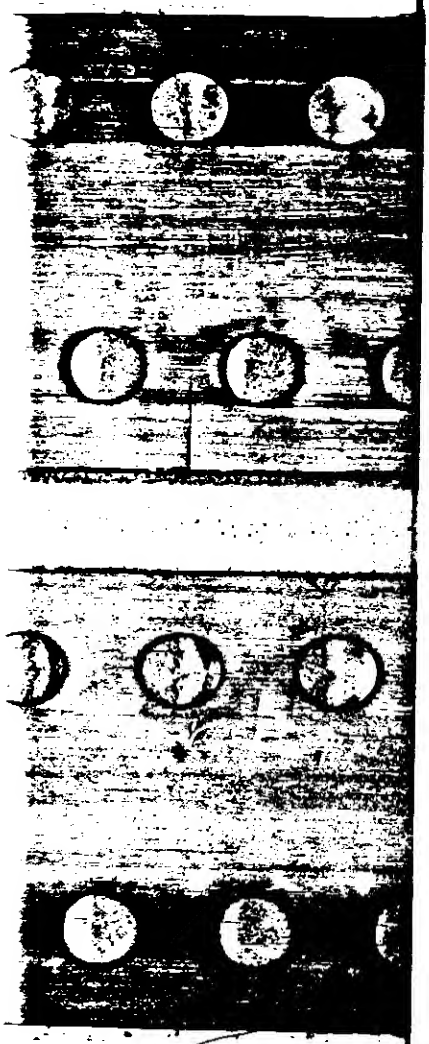
. . . We should be concerned, but not defeated, with constitutional or other judgments of courts which are contrary to our own views. Conceivably our Executive might refuse to execute Laws he deemed unwise, the Congress might refuse to pass any appropriation or other bills for the maintenance of the Government, or the courts might refuse to apply Laws of which they disapproved. Chaos would result from any such misuse of power with effects no one need appraise, since good sense of all has brought about an adjustment of different viewpoints for the harmonious working of our system. Experience has shown that the American people are not helpless in such situations, nor courts adamant to reason. With tolerance for those who differ, with justice to all, with energy to right wrongs, the resultant will surely be a continuation of the governmental principles that have brought so much of liberty and freedom to America.

What Abraham Lincoln said:

I do not forget the position, assumed by some, that constitutional questions are to be decided by the Supreme Court, nor do I deny that such decisions must be binding in any case, upon the parties to a suit, as to the object of that suit, while they are also entitled to very high respect and consideration in all parallel cases by all other departments of the Government.

And while it is obviously possible that such decision may be erroneous in any given case, still the evil effect following it, being limited to that particular case, with the chance that it may be overruled and never become a precedent for other cases, can better be borne than could the evils of a different practice.

—From President Lincoln's 1861 Inaugural Address



Will the Vigilantes Return?

The growing concern of courts for the imagined rights of criminals, the growing disregard of courts for the rights of the public to be protected from murderers, is troubling police officers all over the country.

In one famous case the supreme court of the United States ruled that FBI files are subject to scrutiny by the defense, and if this had not been corrected by congress all sorts of the criminal and traitorous element would have been free to browse through law enforcement secrets.

But other decisions of the supreme court and of other courts have not been corrected by legislative enactment and it is doubtful that all of them can be.

A man who confessed to rape and was sentenced to death after a jury trial was freed by the United States supreme court because there was an interval of 19 hours between his arrest and his arraignment, which the court called "unnecessary delay."

Another has been twice convicted of murder and sentenced to die, and both convictions have been ruled out by the appellate courts because of the same kind of "delay."

A shooting occurred in 1949. A man was tried five times for the crime and convicted three times, the last conviction being May 4, 1956. Most of the trials grew out of the effect of conflicting legal rules. This month the court of appeals freed the criminal on the ground that he had not been given a speedy trial.

Another court of appeals reversal is that of a man who confessed to murdering a girl. The ruling was that too long a time, 16 hours, occurred between his arrest and arraignment.

There is a long list of criminals freed from prosecution for major crimes because of alleged insanity, and then being freed within a short time from an asylum as being cured.

The new court rulings would require the arraignment and trial of many innocent persons who now may be held for a few days and freed when police detective work reveals that they are innocent. Under present rules if the police arrest someone on suspicion in order to hold him for investigation, they must also immediately charge him with the crime or else see a higher court free him on a technicality.

It is such conditions as these, where the courts make so many rules that justice is unable to function because of the maze in which it is caught, that leads to vigilante organizations and lynching parties, because the public must protect itself from the criminal element.

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The Livingston Enterprise
Livingston, Montana
Saturday, November 30, 1957

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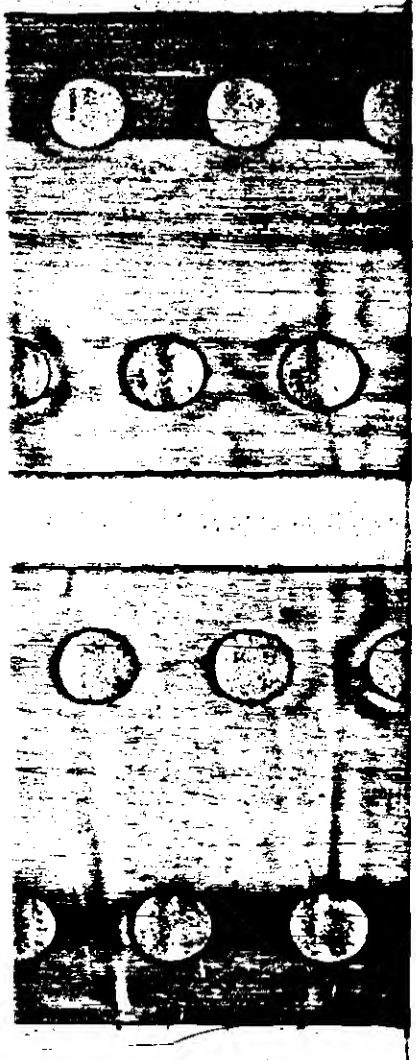

Wake Up, Americans!

By Otto Garr Tague

The session of Congress that starts in January promises to be of great historical importance to the liberty-loving people of America . . . For again, as in many instances in the past, upon its members will devolve the responsibility of repairing American institutions and providing our way of life with badly needed protections.

Many agencies are at work to weaken or destroy our edifices of freedom. Chief of these, because of the position of authority and power it occupies, is the U. S. Supreme Court . . . It is not Communist-controlled, but in recent rulings it has tended to overthrow some of our most cherished institutions guaranteed by the Constitution . . . It has nullified the efforts of our legally constituted instrumentalities to protect us . . . It has arrogated to itself rights and powers never assigned to it . . . By doing so it has become a threat to our freedom from government domination.

Time after time the Supreme Court has deprived our states of the right to self-government . . . It has made possible the invasion of those states by armed forces of the Federal government . . . It has imposed on our people a concept of government foreign to the long-established American concept . . . It has crippled the capacity of the Federal Bureau of Investigation and congressional committees to protect us from our enemies . . . It has turned loose on us, subversives and traitors convicted by juries of their peers under established law and precedent.

Its advances must be stopped . . . Its damage must be repaired . . . Only Congress can do this . . . Therefore, I ask each reader to write to all members of Congress what could be the most important letter he or she ever wrote. And ask all friends everywhere to do likewise. Something like this: "I respectfully urge you to do everything possible to limit the authority and power of the U. S. Supreme Court, restore states' rights and the latitude formerly given the Federal Bureau of Investigation and congressional committees to investigate subversion and crime."

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CINCINNATI ENQUIRER
Cincinnati, Ohio

DATE 12-2-57

PAGE 4

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62-27585-A
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140 DEC 17 1957

76 DEC 17 1957

0-19 (Rev. 9-30-57)

F. B. I.

High Court Criticized By Keating

Excess Zeal On Rights Charged

UTICA, N. Y., Dec. 11 (AP)—The efforts of the Supreme Court to protect individual rights "has endangered the safety of the great mass of our people," Rep. Kenneth B. Keating said today.

The Rochester Republican, criticizing some recent decisions of the high court, told members of the Utica Kiwanis Club that the court had gone "altogether too far in its zeal to protect the rights of individuals."

Laws to Soften Rules

"I have no quarrel with the desire of the court to protect the rights of each and every citizen," Mr. Keating said. ". . . but the guaranties in the constitution of the individual personal liberties do not contemplate the self-destruction of those very liberties."

Rep. Keating said he always would defend the institution of the Supreme Court as the arbiter of the law of the land, but added: "Often we can and must take action to soften or correct the repercussions of some of its decisions."

He said the type of decision he had in mind was the recent ruling that F. B. I. files pertaining to the testimony of a government witness would have to be made available to the defense.

Lower Courts Go Too Far

He said the Supreme Court did not establish any specific guide for lower courts to follow in interpreting the decision.

"Some lower courts carried it so far as to allow all kinds of files to be opened up which had nothing at all to do with the defense.

"As a result, the government had to choose between dropping its case entirely, withholding valuable ammunition in its prosecution, or running the risk of subversive elements learning vital secrets," he said.

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INDEXED 48

162-27585-A
NOT RECORDED
140 DEC 17 1957

Wash. Post and Times Herald
Wash. News
Wash. Star
N. Y. Herald Tribune 2-5
N. Y. Journal-American
N. Y. Mirror
N. Y. Daily News
N. Y. Times
Daily Worker
The Worker
New Leader

Date DEC 12 1957

64 DEC 19 1957

HIGH COURT FACES RISING CASE LOAD

Docket Appears Too Large to Clear This Term

By ANTHONY LEWIS
Special to The New York Times

WASHINGTON, Dec. 15—The Supreme Court appears to be falling behind in the always difficult race to keep up with its docket.

This is one conclusion to be drawn from the annual survey of the court's business published recently by The Harvard Law Review. The Law Review's analysis is based on figures supplied by the administrative office of the United States Courts.

Each year the court agrees to hear a certain number of cases. They are set for oral argument at that term or, if time is short, the next term.

When the court recessed last June, according to an unofficial tabulation, there were 104 appellate cases that it had decided to review but had not had time to hear. They went back on the docket for this fall. Since the 1957-58 term opened in October, the court has agreed to review forty-two more cases.

Thus the total number of cases on the 1957-58 docket on which oral arguments have been or will be held is 146. Last year, which was one of the busiest in the court's history, only 122 cases were decided after oral arguments.

[illegible] the court has agreed to review more cases than it can find time to decide this term. And it is less than halfway through the term. The court will surely take on many more cases for review in the next five months.

What is the result of the lengthening argument docket? Simply to delay arguments and, necessarily, decisions. Some cases that the court agreed more than a year ago to review were heard only last week.

One reason for the trend is simply the volume of work. The justices are handling more cases, but more are coming in.

According to The Harvard Law Review tabulation, the court disposed of 1,670 cases last term. That was substantially more than in recent years. The dispositions during the 1948 to 1956 terms numbered 1,426, 1,302, 1,202, 1,207, 1,378, 1,293, 1,359 and 1,680, respectively.

Despite the large number of dispositions last term, 351 cases remained on the docket in June. That was what The Law Review called a "startling increase" over recent years. Between 1949 and 1956 the figure ranged from 119 to 218.

flow of cases coming to the court, the justices are agreeing to review a larger number. And this is, of course, the really time-consuming work.

During the 1956-57 term the court granted certiorari, a formal term for the decision granting review, in 288 cases. The Law Review called that "an unprecedented number." Between the 1948-49 and 1955-56 terms the figure had run from 88 to 121.

In the eight-month term the average justice writes between twenty and twenty-five opinions. He must pass on more than 1,600 requests for review. He must be in the courtroom sixteen hours a week for half the weeks of the term. And he must spend perhaps six hours almost once a week at a formal conference with his fellows.

In view of those statistics, students of the court say, it is a wonder that the justices keep up with their work.

From time to time it is suggested that more members be added to the court to help carry the load. Franklin Roosevelt's court-packing scheme of 1937 was the most recent serious effort in this direction.

But the advice of past members of the court has been that more justices would not help. Justice Story wrote in 1837, when the court had eight, instead of nine members as at present:

"Many men of many minds require a great deal of discussion to compel them to come to definite results. I verily believe, if there were twelve judges, we should do no business at all, or at least very little."

There is one mechanical device that might help increase the disposition of the court's business.

At present the court has a rigid rule that all cases that have been argued must be decided during the same term or reargued at the next term. The result is that no arguments are held in the final weeks of the term.

If the court relaxed this rule, the justices could hear some cases late in the term and then work on the opinions over the summer. Many members of the court now use the summer period to read petitions for review.

One other tabulation in the Harvard Law Review survey is of particular interest. It is a chart showing the number of times the various members agreed with each other during the past term. The table confirms informal impressions.

The notable fact shown by the table is that the most frequent agreement was among Chief Justice Earl Warren and Associate Justices Hugo L. Black, William O. Douglas and William J. Brennan. Each one agreed with each of the others in at least 75 per cent of their opinions, majority and dissenting.

No two other members of the court agreed with each other as much as 75 per cent of the time.

N. Y. TIMES

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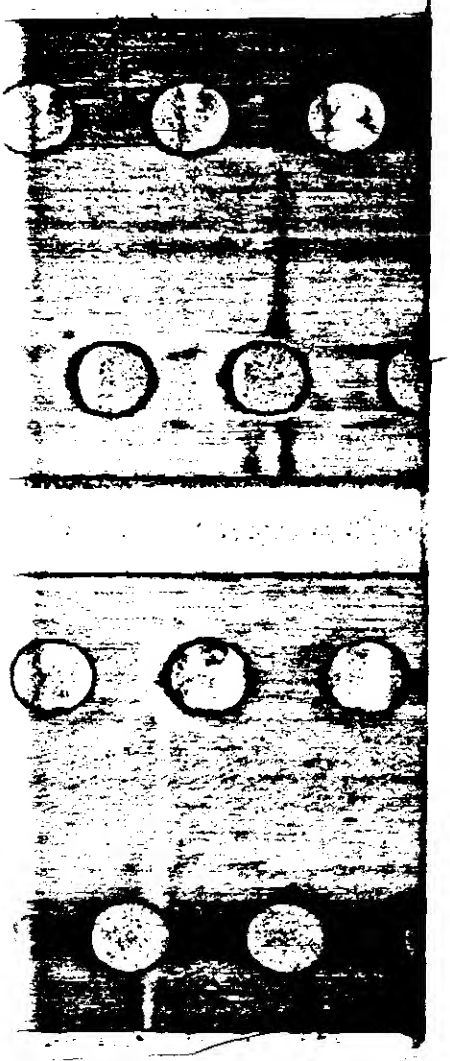

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Reds Escape Smith Act Noose

Communists, domestic and foreign, are celebrating another victory nowadays and laughing up their sleeves at the United States.

For it is evident now, if it wasn't before, that the Supreme Court virtually killed the Smith act's effort to make it a penal offense to teach the violent overthrow of the government.

Federal prosecutors have dropped the charges against the nine persons for whom the highest court ordered new trials last June when it made its strange ruling. At the same time it freed five of the 14 who were convicted five years ago in California under the Smith act.

What the court ruled at that time, in effect, is that it is all right to teach the overthrow of the government by force and violance as long as it does not become evident those teaching such a doctrine make no immediate effort to incite action to that end. In other words, as long as they don't pass out firearms and bombs and say "Start shooting today."

If there's any way Congress can write a law to deal with this threat that the Supreme Court won't throw out, it must do so. In the meantime it appears that the nation is defenseless against the termites until some deaths or resignations change the composition of the court.

THE HOUSTON CHRONICLE
12/17/57
Houston, Texas
EDITOR: M. E. WALTER

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Criminal-Registration Voided by High Court

(Associated Press)

The Supreme Court yesterday, in a 5 to 4 vote, knocked the props from under a Los Angeles ordinance requiring persons convicted of crimes to register with the chief of police.

The Court was told 47 municipalities and five states have similar laws.

Justice William O. Douglas wrote the majority decision, joined by Chief Justice Earl Warren and Justices Hugo Black, Tom Clark and William Brennan. Justice Felix Frankfurter wrote a dissenting opinion for himself and Justices John M. Harlan and Charles Whittaker. Justice Harold Burton wrote a separate dissent.

The Los Angeles ordinance, adopted in 1933, was attacked by Virginia Lambert who in 1951 was convicted of forgery and put on probation. In 1952 the probation order was changed to require her to spend six months in jail.

On Feb. 2, 1956, she was arrested by two policemen. Her counsel said she was searched "apparently for narcotics." She was taken to a police station, questioned for two hours and then charged with having failed to register as an "ex-convict."

A jury convicted her and she was put on probation for three years and fined $250.

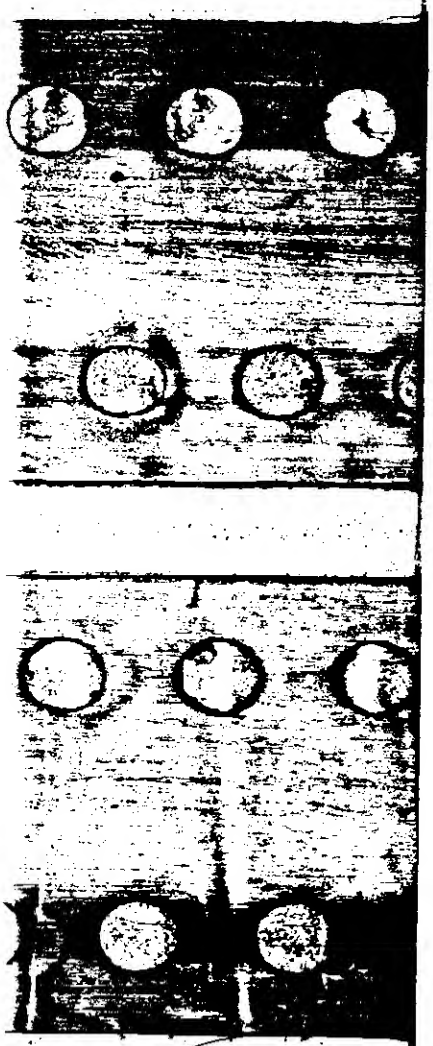
In her appeal the woman contended that any criminal registration law is unconstitutional because "it requires self-incrimination, is an unreasonable exercise of police power, permits cruel and unusual punishment, sponsors unlawful arrest and search, and is a denial of equal protection and due process of law."

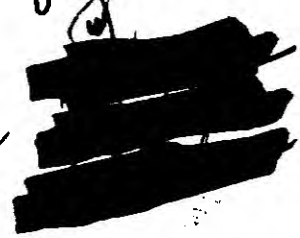
Douglas said the ordinance violates the due process of law requirement of the Constitution's 14th Amendment.

Douglas opinion said the registration act could apply to persons who have no actual knowledge of their duty to register. He added:

"There is wide latitude in the lawmakers to declare an offense and to exclude elements of knowledge and diligence from its definition. But we deal here with conduct that is wholly passive—mere failure to register. It is unlike the commission of acts or the failure to act under circumstances that should alert the doer to the consequences of his deed."

Douglas said the majority felt "actual knowledge of the duty to register or proof of the probability of such knowledge and subsequent failure to comply are necessary before a conviction under the ordinance can stand."





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INDEXED - 9 | 62-27585-A
NOT RECORDED
140 DEC 27 1957

52 JAN 6 1958

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Wash. Post and Times Herald
Wash. News
Wash. Star
N. Y. Herald Tribune
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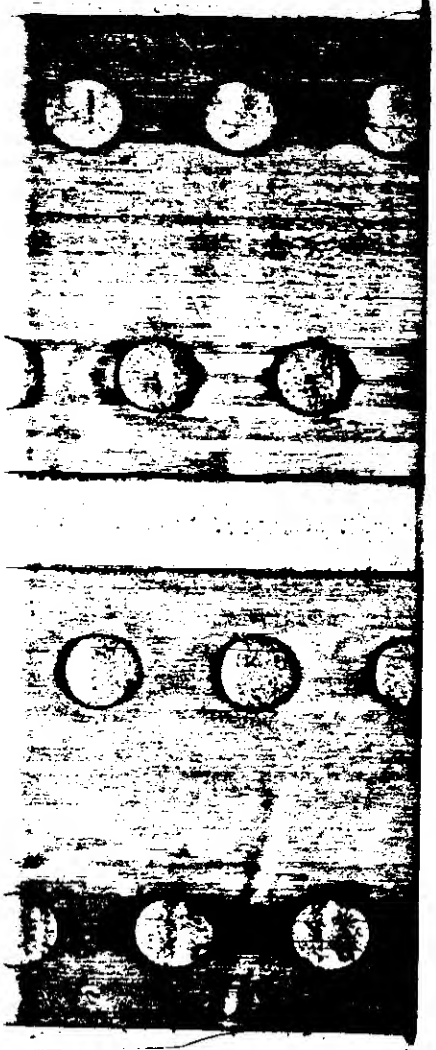
Date DEC 17 1957



Double Jeopardy . . . Supreme Court Gives It a Wider Meaning

Special to the New York Post

Washington, Dec. 17—The U. S. Supreme Court has given a new definition to double jeopardy by ruling that a person acquitted of a lesser degree of murder cannot be retried on a higher degree.

The ruling yesterday reversed the first-degree murder conviction and death sentence of Everett D. Green, 68. He had been indicted in 1953 for first-degree murder after his landlady died in a fire he set.

He was convicted of second-degree murder and arson, but appealed, insisting that death from arson is first-degree murder.

At his new trial he was convicted of first-degree murder and senenced to death. He again appealed under the constitutional provision in the Fifth Amendment that no person shall be subject for the same offense "to be twice put in jeopardy of life or limb."

The high court agreed, 5-4.

In another decision, the court held unconstitutional Los Angeles ordinance requiring ex-convicts to register with police after being in the city more than five days.

The court split again 5-4, the majority holding that the ordinance violates the due process provision of the 14 Amendment.

The case involved Virginia Lambert, who had been convicted of forgery and spent six months in jail in 1952. In 1955 she was picked up by two policemen arrested for not registering, found guilty by a jury, and fined $250.

Associate Justice Douglas wrote:

"Where a person did not know of the duty to register, and where there was no proof of the probability of such knowledge, he may not be convicted consistently with due process.

"Were it otherwise, the evil would be as great as it is when the law is written in print too fine or in a language foreign to the community."

The court agreed to hear arguments in the case of a hotel employes union enjoined under Florida law from picketing Miami and Miami Beach hotels.

The union contends that the state had no jurisdiction since labor matters are under the NLRB.

CLIPPING FROM THE
N.Y. N.Y. POST
EDITION NIGHT EXTRA
DATED DEC 17 1957
PAGE 12
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RE: LEGISLATION
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INDEXED - 26
EX. - 126

58 JAN 1958

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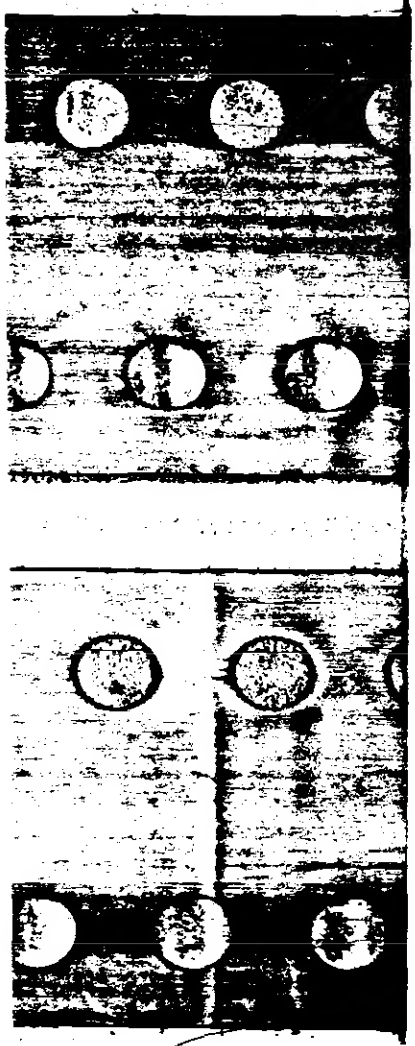

0-16 (Rev. 9-7-56)

Court to Scan 'Privilege' in Press Release

WASHINGTON

The Supreme Court has directed the U. S. Court of Appeals here to examine into the question of "qualified privilege" in connection with issuance of a press release which the lower courts held libelous because it was not absolutely privileged.

Damage awards totaling $8,000 had been made in a suit brought against William G. Barr for issuing a press release which two government employees said defamed them. The high court, without hearing argument, suggested that the lower tribunals weigh "conditional privilege" as a defense.

The Justice Department had sought a wider ruling: that the interest of the public in governmental operations requires a rule of absolute immunity from libel suits against persons acting in their official capacity.

Disputing the Appellate Court statement that the press release might have been absolutely privileged if issued by a Cabinet officer, the Department of Justice argued:

"The rationale of the rule of immunity applies with equal force to lesser officials who hold policy-making or 'political' positions. They, too, should be free to explain their acts and policies to the public without fear of defamation charges. Vigorous performance of duties untrammeled by the fear of retaliation by private damage actions necessitates the existence of the privilege. . . . The result of the decision, if allowed to stand, will probably be . . . a curtailment of information which the public is entitled to and should receive about controversial matters."

The release issued by Mr. Barr named two subordinates as sponsors of a terminal leave payment plan denounced by three Senators as a "conspiracy to defraud the government" and a "raid on the treasury."

The subordinates, Mrs. Linda A. Matteo and John J. Madigan, sued for libel damages in District Court. Mrs. Matteo was awarded $6,500 and Madigan $2,000. The Court of Appeals voted 2-1 to uphold the awards, stating that Barr in explaining to the public his decision to suspend the subordinates "went outside his line of duty."

48

GIR 12

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Wash. News
Wash. Star
N. Y. Herald Tribune
N. Y. Journal-American
N. Y. Mirror
N. Y. Daily News
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Daily Worker
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New Leader
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Date 12-27-57

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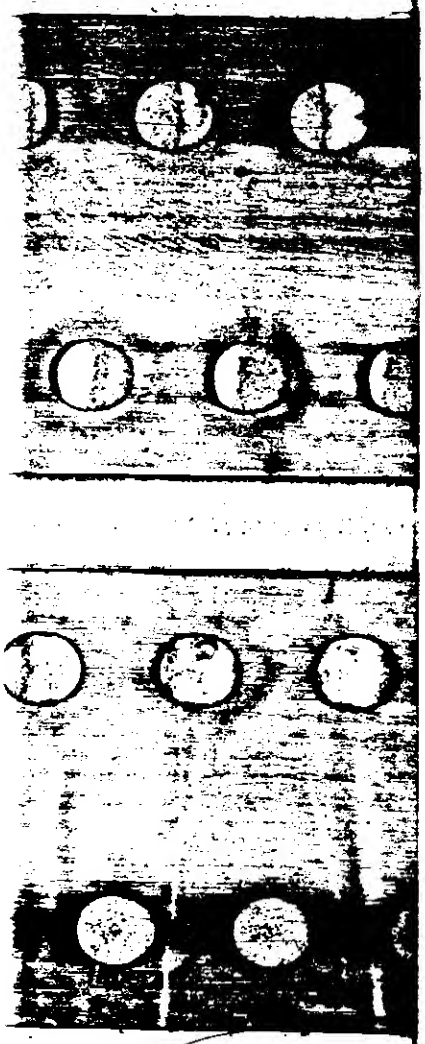

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High Court's New Decisions Boost Man Against The Mass

A series of major Supreme Court decisions in recent months has dealt with the historic question of an individual citizen's rights against public authority.

The latest decision, handed down last week, voided a Los Angeles ordinance requiring persons with criminal records to register with the Chief of Police. The Los Angeles chief says the court ruling tips the scales in favor of crooks.

In a decision a week before, the court held that wiretapping is illegal when state officials do it, just as it is when federal agencies tap citizens' phones. Both state and federal police, as well as private wiretappers-for-hire, have been engaged in tapping, though Congress has forbidden it by law.

* * *

A series of previous decisions in the same general area of individual rights began this summer. One decision put limits on the secrecy of FBI reports backing up an informant's testimony in court when the reports might help to impeach the witness.

Another restrained Congressional committees from bringing criminal charges against balky witnesses when the questions asked the witness were outside the committee's assigned area of work.

A third tightened the legal definition of "advocating" overthrow of the government by force, which is a crime. Now the government must prove that a person was seriously inciting to practical rebellion, not just talking philosophical theory.

61 JAN 8 1958

Charlotte Observer
Charlotte, N. C.
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C. A. McKnight, Editor

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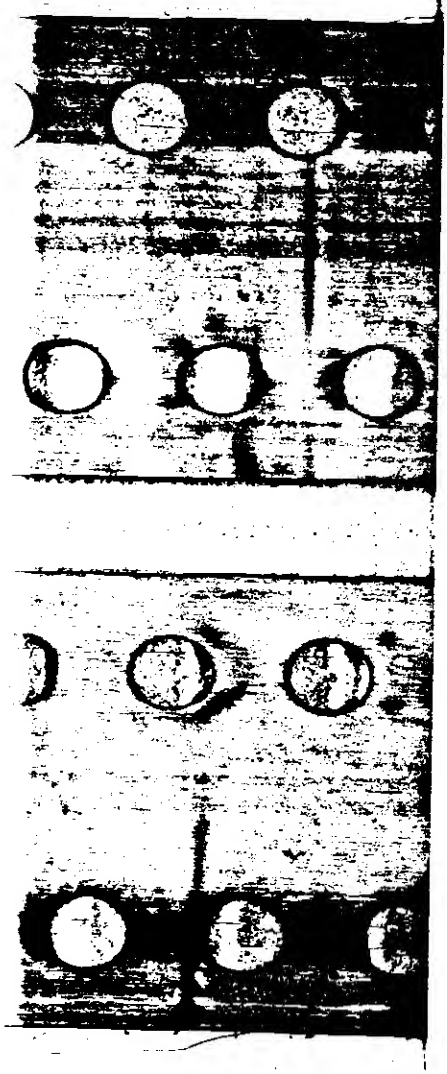


These decisions have created great controversy in legal and political circles, second only to the controversies aroused by the Supreme Court's desegregation decisions, which are in another judicial vein.

There are those who cry that the high court is putting handcuffs on lawful authority, turning over the land to criminals, Reds and other anti-social species.

But liberty is not selective. It cannot be confined to "model citizens only." As someone has remarked, liberty is one commodity you cannot get but by giving it to others.

The high court's new tack in defending what it conceives to be basic constitutional rights against governmental power is a historic one. The court is acting to adjust the delicate balance between liberty and authority.

That conflict is perhaps the greatest continuing news story of history, one that has had different episodes in many different ages and climes. The conflict between liberty and authority is particularly pertinent now in America.

In times of mighty crisis, of wars and revolutions, individual rights always bow to the state because self-preservation is a strong law of life. At such times abuses occur which are the unavoidable by-product of wartime mass discipline.

Japanese Americans were treated badly, during World War II, for example, in a way most people now believe was quite unnecessary but which was in the headlong spirit of the conflict.

In the last decade America has assumed a new and frustrating role in a world that is not at war, yet far from peace. This nation must endure, in President Eisenhower's words, "not a moment, but an age of danger."

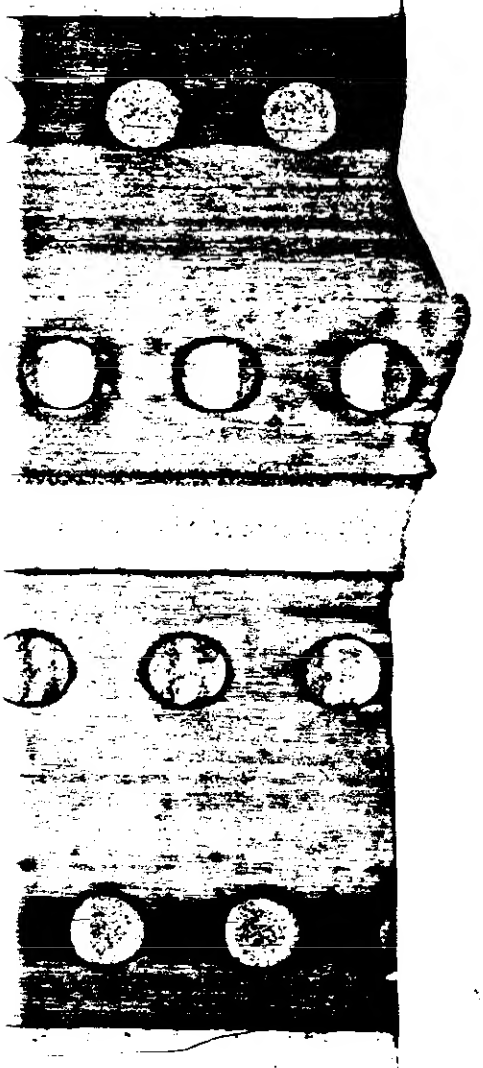
What of the rights of the individual citizen in such times? Will liberties wither in an age of perpetual one-alarm fires, an age when individuals are being swallowed by institutions at home and abroad?

Many fear that individual liberty will so wither. Mr. Justice Jackson, one of the most profound judicial thinkers of recent years, expressed it this way shortly before his death in 1954:

> In this anxiety-ridden time, many are ready to exchange some of their liberties for real or fancied increase in security against external foes, internal betrayers or criminals.
>
> Others are eager to bargain away local control for a Federal subsidy. Many will give up individual rights for the promise of collective advantages. The real question . . . is whether, today, liberty is regarded by the masses of men as their most precious possession.

The high court majority still regards liberty as precious. So do we. And the court's decisions have by no means, as yet, crippled the government —local, state or federal.

The delicate pendulum swings again. Liberties can never be taken for granted. Not only eternal vigilance, but wise and careful redefinition in every age, is the price of basic freedoms.



Wake Up, Americans!

"We consult our 82 predecessors who live with us in books. Together, the 91 decide the issues," declared Supreme Court Justice Harold H. Burton in a recent speech . . . All of which he may believe . . . But it begins to peter out when you examine the record . . . Really makes it look like the nine old men currently are doing a pretty good job of shoving 82 old men around . . . That's all right so long as these 82 justices continue to live in books and can't shove back.

But it would be interesting to see who would shove whom if just a few of such stalwart constitutionalists as Charles Evans Hughes, William Howard Taft and John Marshall could emerge and do a little shoving.

Can you imagine such justices concurring in a decision that would practically destroy the effectiveness of the Federal Bureau of Investigation in its efforts to protect our nation and people against subversion and treachery?

Or lending their support to the purpose of almost completely destroying the right of congressional committees to do the same?

At the time these 82 predecessors "who live with us in books" were members of the Supreme Court, Communism was not a serious threat to our existence. But I'll bet Chief Justice Warren against a slightly soiled Stalin that you could count on your thumbs the number of the 82 who would have found in "changing conditions" an excuse to turn 14 convicted subversives loose to pursue their deadly purpose.

From its adoption in 1791 to the advent of the nine old men who now constitute the court, their predecessors have consistently interpreted the Tenth Amendment to mean just what it says . . . They realized that it is the very cornerstone of our freedom . . . Their decisions are recorded in the books . . . But it remained for the current nine to disregard these and amend the Tenth Amendment to meet "changing conditions."

Shall we let them get away with it?

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CINCINNATI ENQUIRER
Cincinnati, Ohio

DATE 12-27-57

PAGE 4

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UR JUSTICES SEE G ONE FOR HIGH COURT

Warren, Black, Douglas, Brennan Agree in Many 5-4 Decisions

By ANTHONY LEWIS
Special to The New York Times.

WASHINGTON, Dec. 28—In four important decisions this month, the Supreme Court has divided five to four.

In each case the court decided a civil liberties issue in favor of the individual and against Government. And in each case the majority included these four members of the court: Chief Justice Earl Warren and Associate Justices Hugo L. Black, William O. Douglas and William J. Brennan Jr.

Trying to put justices of the Supreme Court of the United States into pigeonholes is a dangerous business. Judges have a knack of surprising the analysts who think their votes can be forecast with certainty.

But no one interested in the court can have failed to notice a significant voting pattern developing in the last year. That is the pattern of the last two decision Mondays—the solidarity of the Chief Justice and Associates Black, Douglas and Brennan.

An analytical table published recently in the Harvard Law Review shows that the first three of these justices agreed with each other in more than 80 per cent of the last term's decisions, and Justice Brennan joined each of the three in over 75 per cent. No other two justices' agreement percentage rose above 70.

4 Close Decisions

Beyond dry statistics, what is the meaning for the court and the country of an evident similarity of viewpoint among four justices?

The recent close decisions may suggest some conclusions. A brief description of the cases follows:

Moore v. Michigan—The majority set aside a Michigan murder conviction on the ground that the defendant had had no counsel when he pleaded guilty and had not "intelligently" waived his constitutional right to one. Justice Charles Evans Whittaker supplied the fifth vote.

Rogoldt v. Perfetto — The court found that Congress had intended to reach only "meaningful political association" with the Communist party when it made party membership at any time in the past a ground for an alien's deportation. Justice Felix Frankfurter, the fifth member of the majority, wrote the opinion.

Lambert v. California — The court held a Los Angeles ordinance requiring convicted felons to register with the police unconstitutional as applied because the defendant had not had *fair notice* of the requirement. Justice Tom C. Clark made the majority.

Green v. United States—In a broadened reading of the double jeopardy provision of the Constitution, the court reversed a District of Columbia murder conviction. Justice Whittaker was the fifth vote.

Individual Aided

In each of the four cases, as has been noted, the claim of authority was rejected and the right asserted by the individual upheld. One might generalize that the four justices are sympathetic to individual liberties.

But such a generalization proves too much and too little. For a judge may sympathize with a party and rule against him. Justice Frankfurter said from the bench last week, as he began an oral dissent urging affirmance of the death sentence in the Green case, that he personally "regards capital punishment as almost a barbaric manifestation."

A more useful test may be a justice's concept of his job—and of the court's role. And perhaps the best approach is in terms of Justice Black, whose seniority, (he is the court's senior member), powerful intellect and determination make him generally regarded as the leading member of the group of four under discussion.

In his twenty years on the court, Justice Black has staked out a number of specific positions.

He is a firm believer that freedom of speech must be guaranteed in the broadest possible terms. He would apply the provisions of the Fifth Amendment rigorously for the benefit of defendants. He gives great weight to the importance of jury trial. He would extend to the states the same limitations the Bill of Rights places on the Federal Government.

But more important than these specific points is Justice Black's general view that the Supreme Court must be a dynamic, assertive part of our system of government—a sw[ord] as well as a shield.

The opposite philosophy, [which] Justice Frankfurter [has] been the leading spokesman, [is] that the court must exerci[se] caution and self-restraint, ma[ximum] let legislatures have the broa[dest] possible discretion no ma[tter] how bad a justice thin[ks] a particular statute may [be]. Justice Frankfurter once put [it]:

"To fight out the wise use [of] legislative authority in t[he] forum of public opinion and b[efore] legislative assemblies ra[ther] than to transfer such [a] contest to the judicial are[na] serves to vindicate the so[ul] confidence of a free people."

Fundamental Liberties

In Justice Black's view t[he] court should not be self-r[e]strained when fundamental [lib]erties are at stake. He wro[te] last June, for example, that t[he] states should be given gre[at] discretion in economic matte[rs]. But he added:

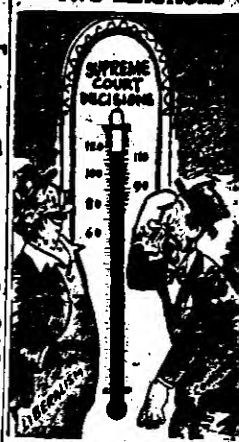
"I think state regulati[on] should be viewed quite diffe[r]ently where it touches or i[n]volves freedom of speech, pre[ss] religion, petition, assembly [or] other specific safeguards of [the] Bill of Rights. It is the du[ty] of this court to be alert to [see] that these constitutionally pr[e]ferred rights are not abridged."

The merits of Justice Black's concept of the court's job [will] pend, of course, on who mak[es] the appraisal.

To some he is a man of cou[r]age, a judicial statesman dari[ng] to stand against a tide of mi[s]guided public opinion, an ori[gi]nal and creative thinker.

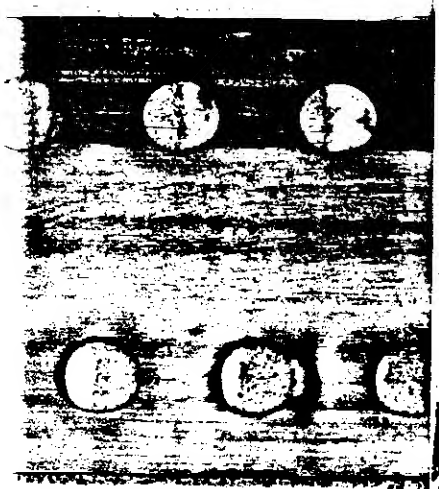
Those on the other side [ac]cuse him of distorting the [law] to reach preconceived [re]sults, of weakening confidence in the court by overreaching. The late Justice Jackson, a bitter enemy of Justice Black's, used the scornful phrase, "a cult of [ad]vertarian judicial activism."

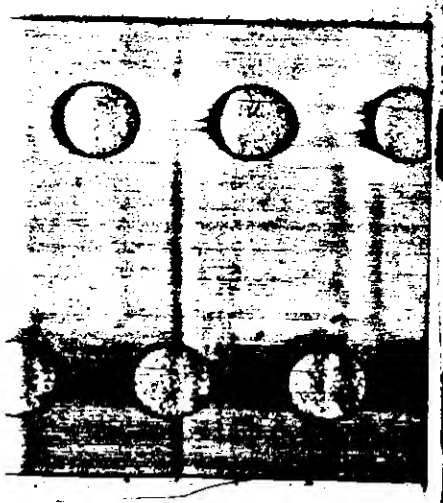
TWO REACTIONS



Sketch by The Miami Herald

"Some like it hot, some like it cold."





DAILY DEFENDER

JOHN H. SENGSTACKE, Editor and Publisher

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MONDAY, DECEMBER 30, 1957 — PAGE 11

Blessings Of Our Times

When an objective accounting is made of the events which unfolded themselves in our time, the Supreme Court's decisions bolstering the Bill of Rights will stand out as a luminous landmark in our social history.

The court had the intellectual fortitude to reverse legal precedents and traditions that had stood for over fifty years. It had the courage to uproot spurious concepts that had become so firmly encrusted in America's social conscience that it took almost a revolution to scrape them off.

The true character of the court began to be felt in 1954 with the celebrated school integration opinion that shocked the South. Cries of interposition filled the air. This was highlighted by Gov. Faubus's abortive attemnts to prevent integration in Little Rock.

The decision opening up FBI files to defendents in criminal cases had the reactionaries in Congress squealing like stuck pigs.

In that same breath the court held that the powers of Congressional investigative committees, though broad, were not unlimited. For this the court was denounced, villified. In their intemperate mood the critics went so far as to call the Justices agents of Moscow.

The irresponsible strictures failed to disturb the personal qualm and the judicial objectivity of the justices. They went ahead with other decisions the sum total of which has contributed toward shaping the destiny of the court as the most liberal in our history.

And we must with honesty count these decisions among the blessings of our times.

Mr. Tolson
Mr. Boardman
Mr. Belmont
Mr. Mohr
Mr. [illegible]
Mr. Parsons
Mr. Rosen
Mr. [illegible]
Mr. Foster
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THE CHICAGO DEFENDER
Date DEC 30 1957
Page 11 Col. 1

Supreme Court

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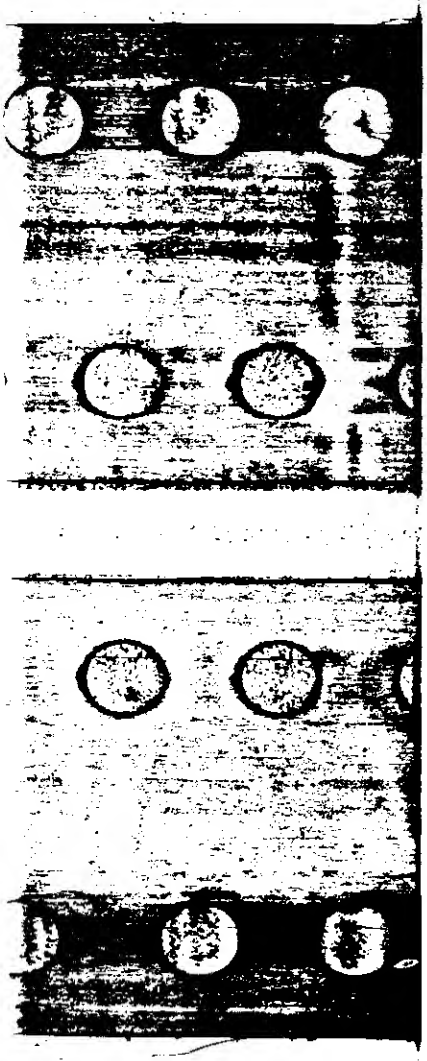
76 JAN 14 1958



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Uniformity On Evidence Rules Sought

A resolution calling for adoption of uniform rules of evidence for use in federal courts throughout the country is expected to be passed by the members of the International Academy of Trial Lawyers here.

JAMES J. MARKLE of Detroit, president of the academy, left little doubt that the resolution would be drawn during the four-day convention starting today at the Arizona Biltmore. He said also that the academy is interested in having the advisory rules committee of the U.S. Supreme Court reinstated.

Markle was critical of the actions of Chief Justice Earl Warren in allowing the committee to be abolished "at the urging of a radical group."

At this afternoon's session, the academy members were to consider the admission of some Japanese jurists to their organization.

ONE OF THE speakers during the convention will be Justice Michael A. Musmanno of the Pennsylvania Supreme Court. He was presiding judge at the Nuremburg war crimes trials after World War II and officiated at the trials involving more than one million murders committed under the Hitler regime.

Kenneth B. Scoville, only Arizonan who holds membership in in 500-member group, is cochairman of the session, with M. M. Belli, San Francisco attorney. Scoville said the purpose of the annual meeting is to "study and discuss improved methods of trial practices and techniques including improvements in the science of judicial proof."

Arizona

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PHOENIX GAZETTE
1/2/58 - page 1

RE: INTERNATIONAL ACADEMY OF TRIAL LWYERS CONVENTION HELD PHOENI WEEK of 12/30/57 (Inf)

INDEXED - 96

EX. - 126

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191 JAN 13 1958

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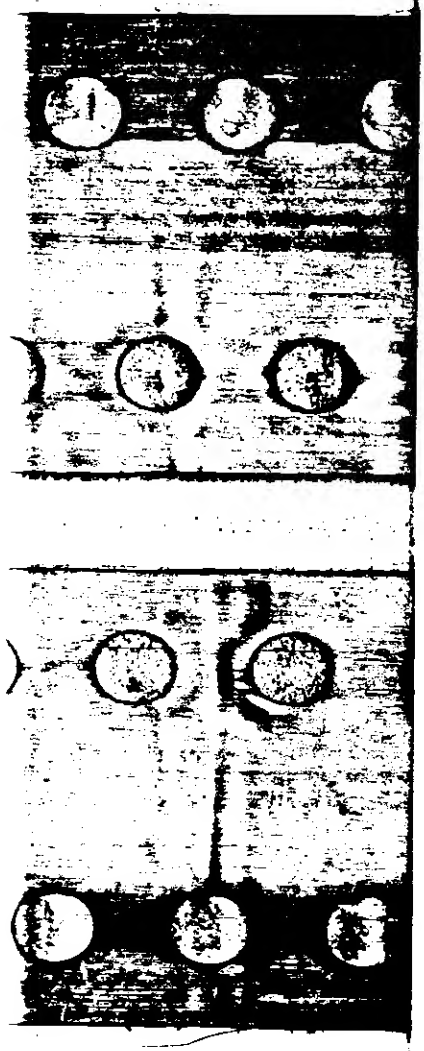

U.S. Reds Grow Bolder

Director J. Edgar Hoover, in his annual report of the Federal Bureau of Investigation to Attorney General William P. Rogers, has sounded a warning that should receive the sober attention of Congress and the American people.

Obviously referring to astonishing decisions by a 5 to 4 vote of the Supreme Court in cases involving Communists but without specifically mentioning the high tribunal, Mr. Hoover declared that the Communist Party has been encouraged by "its success at invoking legal technicalities and by growing public complacency toward domestic threats to America's internal security."

In the light of the decisions by Chief Justice Earl Warren and four of his associates, including the ultra liberal Fair Dealers, Justices Hugo L. Black and William O. Douglas, it is not surprising that Mr. Hoover should report that the Communist Party in the past year had "emerged with renewed confidence and determination." And he added: "The FBI responsibilities in the internal security field assumed greater importance during the year as subversive enemies of the nation grew increasingly bold."

Loyal Americans will hope that the warning by Mr. Hoover will command the earnest attention of Congress when bills aimed at removing some of the Supreme Court's disastrous roadblocks in the path of the Department of Justice and FBI are up for consideration. Only recently, as mentioned in comment on this page, Representative Keating, ranking minority member of the House Judiciary Committee, said that the Supreme Court by some of its decisions "has endangered the safety of a great mass of the people." There can be no doubt about that.

It is plainly the responsibility of Congress to heed the warning issued by FBI Director Hoover. If the Supreme Court under the leadership of Chief Justice Warren continues its policy of making it easy for Communists and pro-Communists to defeat the ends of justice, the American agents of the men in the Kremlin will become even bolder in their defiance of the Department of Justice, the FBI and the laws of the country.

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Editorial
Jamestown Post Journal
Jamestown, N.Y.
December 31, 1957
JOHN HALL
Managing Editor

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46 JAN 13 1958

61 JAN 14 1958 FI

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Catholic Paper Raps Criticism Of High Court

CHICAGO, Jan. 3 (AP)—A national Roman Catholic monthly has taken to task some other Catholic publications for their criticism of the United States Supreme Court as "pro-Communist."

The Voice of St. Jude, published by the Claretian Fathers, said in an editorial it strenuously opposed anti-Communist legislation that violated justice; legislative committees that exceeded their constituted authority, and loyalty investigations "that breached every barrier of privacy established by the Constitution of the United States."

The editorial said the high court has been trying to defend citizens against these violations, and as a result had been called "treacherous" and "pro-Communist" by some Catholic publications. It added "there would be no swifter way to surrender the Free World to communism than by letting injustice and evil and suffering go unchallenged."

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INDEXED - 9

62-27585-12
NOT RECORDED
126 JAN 13 1958

EX-108

Wash. Post and Times Herald A-
Wash. News
Wash. Star
N. Y. Herald Tribune
N. Y. Journal-American
N. Y. Mirror
N. Y. Daily News
N. Y. Times
Daily Worker
The Worker
New Leader

Date JAN 1 1958

68 JAN 14 1958

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Mr. Nease
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Mr. Rosen
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The Rights of Victims

Just before its summer recess, the Supreme Court freed a convicted rapist in Washington, D.C., on the ground that the police had detained him unduly long before formally charging him before an arraignment officer.

The effect of the decision, known as the Mallory Case, was practically to scuttle the confession route to conviction of a criminal. Police officials were stunned and alarmed and some went so far as to say the High Court's judgment could lead to a breakdown of law enforcement.

No doubt about it, the decision imposes a stringent handicap on the police in catching and prosecuting criminals. And the whole controversy has been revived because Mallory now is wanted again on charges of assaulting another woman.

• • •

There have been a number of similar cases in which the Supreme Court seemed to weight its judgment on the side of the convicted.

This country's whole system of law has been built on a well-defined respect for individual rights. Its criminal codes consistently protect the innocence of the accused until he has been proven guilty.

But in the Mallory Case no question of innocence was raised. The judgment was reached purely on the conduct of the arresting officers. And it not only liberated an obviously dangerous man, but laid down a stringent rule of practice for all similar cases.

• • •

While our laws and the judges who interpret those laws should forever be on guard against punishing the innocent, the victims of crime also have rights. They are innocent, too, and deserve the full protection of the law, the police and the judicial system.

THE HOUSTON PRESS
1/9/58
Houston, Texas
Editor: GEORGE CARMACK

67 JAN 20 1958 X224

NOT RECORDED
191 JAN 17 1958

0-19 (Rev. 10-29-57)

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Trotter
Clayton
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Court Clerks' Role

At last the cat is out of the bag and we now have the answer to the puzzle of the un-American decisions of the Supreme Court. William H. Rehnquist, law clerk to Justice Robert H. Jackson in 1952-53, in a recent article in U. S. News & World Report, notes that in the large majority of cases the decision as to which deserve a hearing is based upon summaries and recommendations prepared by the law clerks, and says:

"Some of the tenets of the 'liberal' point of view which commanded the sympathy of a majority of the clerks I knew were: Extreme solicitude for the claims of Communists and other criminal defendants; expansion of Federal power at the expense of State power; great sympathy toward any Government regulation of business—in short, the political philosophy now espoused by the court under Chief Justice Earl Warren. . .

"It is fair to say that the political cast of the clerks was to the 'left' of either the Nation or the court."

Thus it appears that not only the justices but also their clerks should be approved by the Senate Judiciary Committee. The clerks seem to be quite adept in the use of words to conceal the absence of thought. These revelations by Mr. Rehnquist urgently call for the kind of searching investigation that only a committee of Congress, backed by the full power of the Legislature, can conduct. Old Reactionary

Wash. Post and Times Herald
Wash. News
Wash. Star
N. Y. Herald Tribune
N. Y. Journal-American
N. Y. Mirror
N. Y. Daily News
N. Y. Times
Daily Worker
The Worker
New Leader

Date

62-27585-A
NOT RECORDED
140 JAN 15 1958

62 JAN 16 1958

0-19 (Rev. 10-29-57)

Tolson
Boardman
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Four to Four

The four-to-four decision of the Supreme Court in the Alfonse Bartkus case leaves the law in regard to conflicting decisions by Federal and state juries in a state of confusion. The effect of the even split in the Supreme Court is to uphold the rulings of the Illinois courts sustaining the conviction of Bartkus for bank robbery even though a Federal jury had acquitted him of charges growing out of the same crime. But the question whether a state conviction after a Federal acquittal amounts to placing the defendant in double jeopardy thus remains even more controversial than it was before.

Fortunately, the Court will have another go at the problem, for it has agreed to review a similar case involving a Federal conviction after a state conviction for the same crime. Here the issue may be more clear-cut, for the double jeopardy, if there is any, appears to have been a direct result of Federal action, and the Fifth Amendment prohibition against putting a person twice in jeopardy for the same offense operates directly against the Federal Government. It is to be hoped that the entire Court will be able to sit on this case and that a more decisive ruling may be forthcoming.

It is possible, however, that no comprehensive or general rule can be laid down when the double-jeopardy plea involves separate Federal and state trials. No doubt it would be double jeopardy if a Federal jury convicted a person of precisely the same crime for which he had already been convicted by a state. But state and Federal laws are seldom identical, and it is quite possible that an offender may be guilty under the state law but not under the Federal law, or vice versa. If a kidnaper transported his victim from Maryland to Virginia, for example, he might be convicted of kidnaping in Maryland even though a Federal jury might not find sufficient evidence to convict him of taking his victim across a state line.

Because of the great diversity of Federal and state laws this question may be in litigation for a long time, but a full Court can certainly make it clearer than it is today.

62-27525-11
NOT RECORDED
138 JAN 16 1958

Wash. Post and Times Herald
Wash. News
Wash. Star
N. Y. Herald Tribune
N. Y. Journal-American
N. Y. Mirror
N. Y. Daily News
N. Y. Times
Daily Worker
The Worker
New Leader

Date JAN 1 1 19

62 JAN 17 1958

Court Decisions Having Effect Of Benefiting Communist Party

The extent to which Supreme Court decisions have breached the dikes erected against subversive activities now stands clearly outlined. The communist party of the United States itself is now a direct beneficiary.

The United States Court of Appeals applied the interpretations of the Jencks case as decided by the Supreme Court in a ruling given in the Government's efforts to label the communist party a tool of Moscow. The decision is that the Government, in its formal request to the Subversive Activities Control Board to have the reds so labeled, must give the party access to reports which a key witness made to the FBI, or else strike that testimony from the records.

Clinton Jencks, now a resident of Albany, Calif., was convicted of filing a false noncommunist affidavit while president of the Mine, Mill and Smelter Workers Union. The Supreme Court ruled that unless the FBI handed over to the defense reports of witnesses whose testimony was used in court, that testimony had to be disregarded.

The Justice Department, rather than hand the FBI files in the Jencks case in accordance with the decision, decided to dismiss the case against Jencks.

And now that principle has been picked up by the communist party and effective use has been made of it. Unless the Department of Justice wants to release the

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CAKLAND TRIBUNE
Oakland, California
Date: 1/13/58
Edition: Final
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FBI - SFO
Bureau

76 JAN 29 1958

Weighted For Criminals

One ANDREW R. MALLORY, 22-year-old Negro, some months ago was convicted by a jury in Washington, D. C., and sentenced to death on a rape charge. He had made a voluntary confession in which there was no suggestion of coercion on the part of officers.

Last June the Supreme Court of the United States reversed MALLORY's conviction on the ground that the police had not arraigned him soon enough after his arrest. There was no question of the man's guilt or of the validity of his confession and other evidence against him also stood up.

The Supreme Court was moved solely by its feeling that no formal charge had been made against MALLORY within a period of time it regarded as proper. The ruling destroyed the case of the prosecution and MALLORY was turned loose.

At last report the police were looking for MALLORY again. This time he is wanted for housebreaking and for assaulting the daughter of a woman who had been kind to him, all within about half a year of his release from jail.

The case here in question is another indication that the Supreme Court at times appears to feel that the law-abiding and the majority have no rights at all. At all events, the court's decision in the MALLORY matter obviously means that it has weighted the law heavily for criminals, even when their guilt is not questioned.

The people are entitled to far more consideration than the Supreme Court has chosen to give them in this instance. It has turned loose a dangerous criminal to repeat his heinous offenses. Whether MALLORY should be in prison or in a mental institution has not been determined, but by no manner of means should he be free to prey on society.

The court's treatment of the MALLORY case has disturbed police all over the country, and for good reason. Congress should waste no time whatever in spelling out the law on prompt arraignment in words that cannot be mistaken. It is outrageous that any technicality should be employed to force law-enforcement agencies to free a self-confessed criminal who had been proved guilty in court.

FILED 1958

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Mr. Boardman
Mr. Belmont
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THE COMMERCIAL APPEAL
MEMPHIS, TENNESSEE
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FBI - MEMPHIS

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POTOMAC FEVER

FLETCHER KNEBEL

The Eisenhower team celebrates its fifth year in office. The years have passed quietly. In fact, for months at a time, you'd hardly know anybody was there.

* * * *

Former Secretary of State Acheson chides the G. O. P. on "inaction." If the Republicans refuse to make a move, how are the Democrats going to charge it's a retreat?

* * * *

Ike rallies Republicans in a Chicago speech. 1st Republican: "Did that speech pep you up?" 2d Republican: "You bet—like a slug of hot tea after a warm bath."

* * * *

A tribe of North Carolina Indians routs the Ku Klux Klan. Carolina war party chant: "Nothing is de luxer than to chase a Ku Ku Kluxer in the morning."

* * * *

Sputnik must be some new kind of flying antibiotic. No sooner did it begin to orbit than Asian flu practically disappeared.

* * * *

Anybody can get arrested these days, but—thanks to the Supreme Court—it takes a real genius to stay in jail.

* * * *

Ike asks business and labor to hold off price and wage boosts. This advice won't be ignored. It will be weighed very carefully before being shelved.

62-27585-A

NOT RECORDED
JAN 30 1958

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N. Y. Herald Tribune
N. Y. Journal-American
N. Y. Mirror
N. Y. Daily News
N. Y. Times
Daily Worker
The Worker
New Leader

Date JAN 21 1958

3
JAN 30 1958

0-19 (Rev. 10-29-57)

Solicitude for Felons Charged to High Court

Public preoccupation with the Supreme Court school segregation decisions overshadows "the even more dangerous and warped legal philosophy represented by the court's decisions in criminal cases," according to Representative Harrison, Democrat of Virginia.

He spoke at the annual banquet of the Alexandria Chamber of Commerce at National Airport last night.

"The drastic rewriting of criminal law which has been attempted by these jurists-turned-legislators in recent years has shown a special solicitude for Communist subverters, rapists and corrupters of youth," he said.

The 7th District member of Congress, who is a former judge in Winchester and prosecutor there, cited the Mallory case as one example of the court's decisions in criminal cases.

In the Mallory case, it was held that a confession was inadmissible as evidence because too long a time had elapsed between his arrest and arraignment.

Threat to Order

"Those who defend State and local administration of the public schools cuss the court with good reason," Mr. Harrison said, "but we should consider the heavier contribution to the breakdown of representative government and public order which these judges have made by their striking down of law enforcement procedures and methodical freeing of convicted murderers, rapists and other criminals of the basest sort.

"On the other hand, those who approve the court's efforts to force mixing of the races in the schools would do well to turn their attention to what has been going on in the field of criminal law behind the marble facade of the Supreme Court Building.

"The infamous Mallory decision, for example, should be of deep concern to thinking citizens of all races, for the freed rapist Mallory, a Negro, has a record of brutality against white and Negro women alike. It probably has not bruised the consciences of the benign justices to know that this violently lawless individual, freed to prey again on th law-abiding citizens of the N: tion's Capital, promptly becar, once more a fugitive from ju tice on an assault charge.

Other Hearings

"In other decisions, editing the laws as they go, the mighty judicial brains have struck down State statutes designed to protect the young from peddlers of pornographic literature; sprung to the defense of a magazine frankly dedicated to homosexuality; cheered Communist conspirators with a license to work for the overthrow of this republic—so long as they do not state publicly just how they intend to overthrow it; barred the State from enacting laws against subversives; blocked the States from protecting their citizens from Communist teachers and Communist lawyers; given gangland carte blanche to arrange its nefarious business by telephone and, in general, given the hoodlums new swagger in the realization that the cards are stacked in his favor."

Mr. Harrison said the court "is making mockery of the Constitutional checks and balances which the founders of our Nation took such pains to devise."

"It has sought to displace the elected representatives of the people in the lawmaking function," he said. "It has thrown into chaos the law enforcement procedures of the Executive Branch and of the State and local governments."

Remedy Suggested

He suggested as a remedy: "The executive and the Congress can work together to restore by practical means the balanced role of the Federal Judiciary. The Constitution, it will be remembered, does not assign to the court the law-writing 'supremacy' it has grasped for itself in recent years —legislation can limit its appellate jurisdiction.

"The governors and legislatures of the States can assert the powers reserved to the States and to the people by the Constitution. Many Supreme Court decisions, such as in the Mallory case, can be overturned by the enactment of new statutes."

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Wash. Post and Times Herald
Wash. News
Wash. Star
N. Y. Herald Tribune
N. Y. Journal-American
N. Y. Mirror
N. Y. Daily News
N. Y. Times
Daily Worker
The Worker
New Leader

Date

JAN 22 1958

THINKING OUT LOUD

Restoring States' Rights

By LYNN LANDRUM

A BILL is proposed in Congress to restore to states in full their right to authorize use of wire tapping for police purposes, notwithstanding a Supreme Court ruling purporting to take away that power from the states.

In the case of Benati v. United States last December the Supreme Court of the United States handed down a decision covering the following language in the Communications Act of 1934 as enacted by Congress on wire-tapping activities

"NO PERSON not being authorized by the sender shall intercept any communication and divulge or publish the existence, contents, substance, purport, effect or meaning of such intercepted communication."

Under the Constitution of the State of New York, police of the state may apply to a state court for permission to tap wires for the purpose of gaining evidence on known or probable crime. Upon receipt of court authority, New York State police may tap a wire and testify in court as to evidence so received.

The Supreme Court of the United States held that Congress intended to invalidate the Constitution of the State of New York (and, incidentally, that Congress had the power so to invalidate it) so far as wire tapping was concerned. The purpose of the bill now under consideration is to return to the states the police authority and power which was residual in those states under the Tenth Amendment to the Constitution of the United States.

The refusal of the Supreme Justices to investigate the real intentions of Congress is an alarming attitude of most dangerous trend. It puts the will and judgment of the Supreme Court above, and instead of, the will and judgment of the Congress itself. Under pretense of interpreting, the court is actually legislating—and legislating in fields where neither the court nor the Congress has any proper authority to make or unmake laws affecting the government of the people of the several states.

WIRE TAPPING is an evil thing, where the purpose of the tapping is to steal information or maliciously to interfere in affairs which are legitimately of private concern alone.

But the detecting of crime is not snooping. And one who uses telephone or telegraph is on notice that, unintentionally or intentionally, communication may be overheard or read by persons not concerned with it. And when communications so overheard are criminal in their nature and implications, it is the duty of any good citizen cognizant thereof to disclose them to the authorities. Particularly, where a person acquires knowledge of treason or contemplated treason, he is in duty bound to disclose that for the protection of his country.

The trend of the present Supreme Court of the United States is dangerous to the republic.

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- Editorial -

"Dallas Morning News"
Dallas, Texas, 1/22/58

William B. Ruggles, Editor

Routing [redacted]

FD-4 (Rev. 6-14-56)

Date 1-28-58

To

[X] Director

Att. CRIME RECORDS

FILE # .....

[ ] SAC .....

Title .....

[ ] ASAC .....

[ ] Supv. .....

[ ] Agent .....

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[ ] CC .....

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ACTION DESIRED

- [ ] Acknowledge
- [ ] Assign ..... Reassign .....
- [ ] Bring file
- [ ] Call me
- [ ] Correct
- [ ] Deadline .....
- [ ] Deadline passed
- [ ] Delinquent
- [ ] Expedite
- [ ] File
- [ ] Initial & return
- [ ] Leads need attention
- [ ] Open Case
- [ ] Prepare lead cards
- [ ] Prepare tickler
- [ ] Recharge serials
- [ ] Return assignment card
- [ ] Return file
- [ ] Return serials
- [ ] Search and return
- [ ] See me
- [ ] Send Serials .....

to .....

- [ ] Submit new charge-out
- [ ] Submit report by .....
- [ ] Type

[ ] Return with explanation or notation as to action taken.

There is attached hereto an article which appeared in the Blytheville Courier News, Blytheville, Ark., concerning favorable comments made by Circuit Judge H. G. PARTLOW, of Blytheville. For the Bu's info, the LR indices contain no derogatory information concerning Judge PARTLOW.

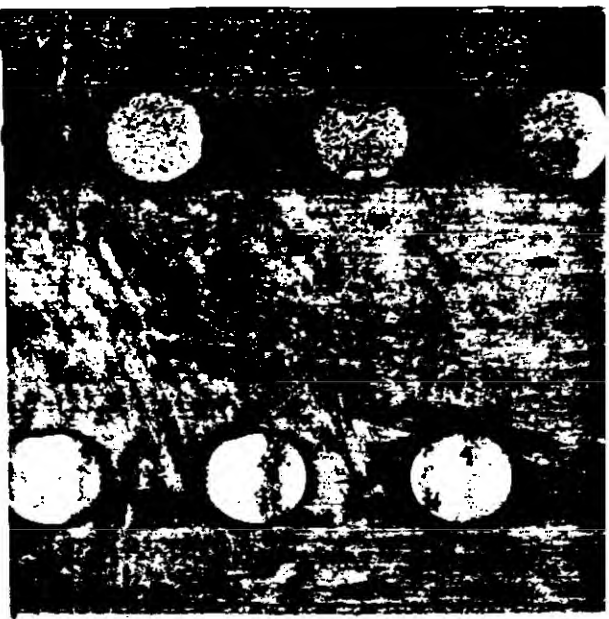
Enclosure - 1
JJC/rp

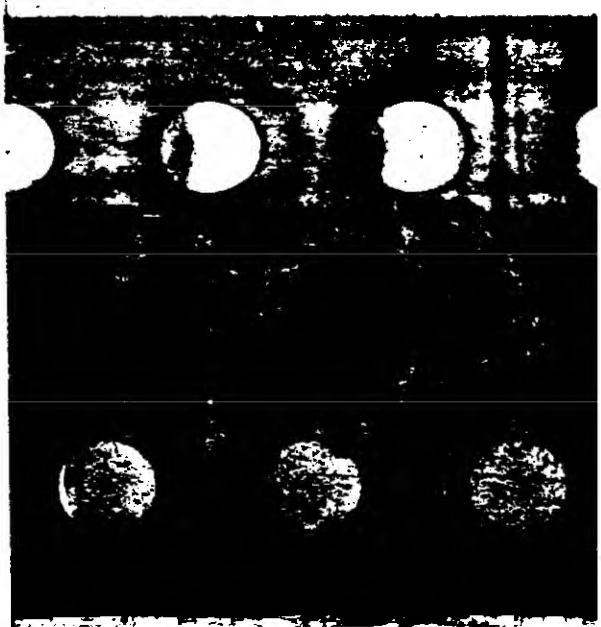
[ ] See reverse side

SAC J. J. Casper

Office LITTLE ROCK

4/1 file





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Supreme Court Trend Is Scored

Treating the integration issue as only incidental to the overall subject, Circuit Judge H. G. (Charley) Partlow last night said the present course of the U. S. Supreme Court is fraught with danger.

Partlow was principal speaker at last night's Distinguished Service Awards banquet of Blytheville's Junior Chamber of Commerce.

"Today, we find the U. S. Supreme Court legislating, and modifying and enlarging the very Constitution of the United States," Partlow said.

"The original system of checks and balances in our government is being upset by the court's decisions over the past four years, especially.

"We now find ourselves in a position where only five men — a majority of justices — can override in practically every instance the Congress and the President of the United States.

"This situation comes dangerously close to being an oligarchy," Partlow stated.

Partlow commented only briefly on the court decision to integrate schools. He hammered away at what he termed an usurpation of powers by the nation's highest court.

"In the field of criminal law, some of the court's decisions have been shocking.

"Senator McClellan recently said that a Communist has never lost a case before the Supreme Court . . . well, the criminals who have made it to the highest court have done nearly as well."

The Circuit Judge deplored the recent court decision ordering the FBI to open its files to any person charged under the Smith Act with conspiring to overthrow the government of the United States.

"Rather than subject its informants to reprisal and thus jeopardize the FBI position in obtaining information in the future, the Bureau simply decided to drop charges against this group of Communists."

Criminals, too, will have access to FBI files under the decision in certain instances, Partlow pointed out.

"Thomas Jefferson foresaw the dangers which might arise from the Supreme Court and in a series of letters warned that the court is 'irresponsible.'

"I think he meant that in the sense that the Supreme Court, appointed for life, is responsible to no person or agency.

"When I was a young man in

See COURT on Page 12

the legal profession, the people and lawyers held a tremendous respect for the Supreme Court of the United States.

"I hope to see the day when the Court will return to its former position in the eyes of the public and of the legal profession."

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REC-99 62-27585-A

EX-117

Blytheville Courier News
Blytheville, Ark.
1-24-58
Page 1

76 FEB 19 1959

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Mr. Rosen
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Mr. Holloman
Miss Gandy

UPS 3
(COMMUNISTS)
THE SUPREME COURT DENIED A REHEARING TO TWO OF THE 11 COMMUNIST CONSPIRATORS WHOSE CONVICTIONS WERE AFFIRMED IN 1951.
THEY ARE GILBERT GREEN AND HENRY WINSTON, NOW IN FEDERAL PENITENTIARIES AT LEAVENWORTH, KANS., AND TERRE HAUTE, IND., RESPECTIVELY, SERVING THE SENTENCES IMPOSED FOR THE CONSPIRACY.
GREEN AND WINSTON BASED THEIR LEGAL MANEUVER IN THE ORIGINAL CONSPIRACY CASE ON A DECISION HANDED DOWN BY THE HIGH COURT LAST JUNE. THE CASE INVOLVED 14 "SECOND-STRING" CALIFORNIA COMMUNISTS, CONVICTED -- AS WERE THE FIRST 11 -- UNDER THE SMITH ACT OF 1940.
IN ITS JUNE OPINION THE COURT HELD THAT THE SMITH ACT FORBIDS ADVOCATING ACTION THAT WOULD LEAD TO THE VIOLENT OVERTHROW OF THE GOVERNMENT BUT DOES NOT STOP ANYONE FROM URGING BELIEF IN THE VIOLENT OVERTHROWN OF AN ABSTRACT PRINCIPLE.
GREEN AND WINSTON SAID IF THIS REASONING HAD BEEN FOLLOWED IN THEIR CASES, THEY WOULD HAVE BEEN CONVICTED.
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JAN 3 1958

These Days . . . . By George E. Sokolsky

The Mallory Case

ANDREW MALLORY, a rapist, was held by the Washington police for seven and one-half hours before he was arraigned. It took the Washington, D. C., police that long to gather the data, to collect the evidence, to check alibis, etc., etc.

Sokolsky

Mallory's counsel went into the Supreme Court on appeal and the Supreme Court decided that the police had held him too long before arraignment—seven and one-half hours. Mallory did not deny that he was a rapist. As a matter of fact, he had been convicted in a court of law at a fair trial and condemned to death. The issue was not the nature of the crime or the crime itself. It was simply how long may the police hold an arrested person to question him and to gather evidence when a crime has actually been committed. On that issue the United States Supreme Court freed Mallory on the sole ground that he had been held too long.

Police officers throughout the country were chagrined at this decision because it handicaps them in handling murder, kidnaping and other criminal cases. If they cannot immediately gather the evidence, they must let the culprit go.

SUPPOSE a murder is committed at 1 a. m. The police are notified that a body is on the sidewalk at 2 a. m. They arrive on the scene. There is a fingerprint which is telefaxed to the FBI for identification. At 2:30 a. m., the owner of the fingerprint is identified. By 3:30 a. m., the alleged murderer is brought in. He has an alibi; it needs to be checked. The hours of questioning, of denial, of added evidence coming in, of confrontation with facts pass. How many hours? Some data cannot be gathered during the night. Morning comes. A new start is made in a dozen directions. It is found, for instance, that the culprit, who denied he ever saw the victim, had been her constant companion for a year. In the end, forth comes a sordid story of love offered and not accepted, of unrequited passion, of gifts accepted but its giver ridiculed, of annoyance and anger and foul words hurled at each other. Finally, the overt two-timing and the murder.

Are the police to be handicapped by requiring them to accomplish all this in 15 minutes or one hour or 15 hours? How long? Senator John Marshall Butler of Maryland last July had introduced a bill for the District of Columbia giving the police a maximum of 12 hours before arraignment. That is a reasonable period.

UNDER THE various protections of the Constitution, the Supreme Court let the rapist go free. But the people are not free from the fear of sex crimes which are on the constant increase. Police work grows increasingly more difficult because of modern means of transportation, to take one facility. A murderer with a well-arranged formula can be in Cairo or Rio by airplane before the police may even be notified that a crime had been committed.

Modern methods of crime detection have not offset modern means of evasion. The head of a narcotics syndicate may be a well-dressed, well-housed, Cadillac-transported gentleman who contributes to all the local charities and is a faithful member of his church. The distance between him and the junkie is greater than the geographic distance between him and the dope market in Tientsin, China. Pushers are caught; users are caught. But this fellow does not associate with such vulgarians. He is a soft-spoken contributor on a local scale to one or both major political parties and probably has a Congressman or two in his pocket, having sponsored such lawyers politically and put up the cash for their operations. He is a very smart man.

Law enforcement grows more difficult as crime becomes better organized. Big crime is now international in its connections; small crime is growing younger and younger. The law is inadequate in some respects; it certainly makes crime detection in advance of commission practically impossible. The do-gooders encourage criminal acts, particularly sex crimes, by their psychiatric and social ideas. Does it do a young lady, who has been mauled, raped and left to die in the woods, any benefit to recognize that the uncontrolled beast who did the act suffered from an uncontrolable compulsion? Does it do her heartbroken parents any good? Does it do the community any good?

Supreme Court

76 FEB 10 1958

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62-27585-1

INDEXED 39

FEB 6 1958

Wash. Post and Times Herald A-C
Wash. News
Wash. Star
N. Y. Herald Tribune
N. Y. Journal-American
N. Y. Mirror
N. Y. Daily News
N. Y. Times
Daily Worker
The Worker
New Leader

Date JAN 25 1958

Supreme Court

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MEMO TO CONGRESS

In the continuing Congressional excitement about sputniks, missiles, and the like, the Earl Warren Supreme Court's pro-Communist and pro-criminal decisions seem to have been pretty largely forgotten.

Paul W. Williams

Paul W. Williams, U. S. Attorney for New York's Southern District, made a striking speech on this subject a few days ago, at a gathering of New Jersey prosecuting attorneys.

Mr. Williams, though wisely voicing no disrespect for the Warren court, reminded his fellow prosecutors that two of the court's recent decisions have made their job a lot tougher than it ought to be.

One of these was the wiretapping decision, barring from federal court trials wiretap evidence obtained by state or city officials. This decision calls for Congressional amendment of the Federal Communications Act of 1934—unless, as Williams put it, Congress wants police and prosecutors to "act as if the telephone was never invented."

The other decision which hamstrings police and prosecutors concerns a conviction for rape in the District of Columbia, which the court reversed because it said the accused had been held too long by police before they got a confession from him.

Maybe this particular rapist was held too long. But the Warren court went on to make some side remarks—called *dicta* by lawyers.

In these, the court virtually forbade police to hold a suspect for more than a few minutes between arrest and arraignment, and added that "the delay must not be of a nature to give opportunity for the extraction of a confession."

This decision is hampering police and prosecutors all over the country, and seems sure to spring an increasing number of plainly guilty crooks and criminals as time goes on.

It is to be hoped that Congress will remember pretty soon that it has a duty to protect Americans from enemies within the country as well as without.

REC- 13
62-27585-A
EX-12

Wash. Post and Times Herald
Wash. News
Wash. Star
N. Y. Herald Tribune
N. Y. Journal-American
N. Y. Mirror
N. Y. Daily News
N. Y. Times
Daily Worker
The Worker
New Leader

Date

7 FEB 13 1958

FEB 3 1958

Supreme Court

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Let's Not Be Shrill

A-14

It has been said that there is "real danger" that Congress "will be panicked by the shrill cries of policemen and prosecutors" into adopting a bill to upset the Supreme Court's ruling in the Mallory case. It would be most unfortunate if Congress were to be panicked by anyone's shrill cries. So let's not be shrill. Let's try to look at the facts.

The essential fact is that Mallory has been freed although he is a guilty man. He committed a rape, he confessed, physical evidence corroborating the confession was produced. Mallory was duly tried and convicted. The conviction was approved by the trial judge. It was upheld in a majority opinion by the Court of Appeals. It is not correct to say that the procedures followed by the police in Mallory's case were *clearly* improper under the rule laid down by the Supreme Court in the McNabb decision some 15 years ago. Able and honest judges in the trial and appellate courts did not find that the police had violated that rule.

In reversing the conviction the Supreme Court did not hold that any of Mallory's constitutional rights had been violated. The Fourth, Fifth and Sixth Amendments were not involved. What was involved was an interpretation of Rule 5 (a) of the Federal Rules of Criminal Procedure, as approved by Congress. This distinction is of some importance. If the question were a constitutional one Congress could not "upset" the court's decision by adopting new legislation. The real question involved a judicial interpretation of the *intent* of Congress. What was that intent? If this intent has been misinterpreted, Congress should enact a law making clear its real intent, even though this would upset the Mallory ruling.

Rule 5 (a) requires that an arrested person be arraigned "without unnecessary delay." In speaking for the court in the Mallory case, Justice Frankfurter said: "The requirement of Rule 5 (a) is part of the procedure devised by Congress for safeguarding individual rights *without hampering* (italics supplied) effective and intelligent law enforcement."

It is right here, we think, that the ruling in the Mallory case breaks down. It *is* hampering effective and intelligent law enforcement. And unless Congress acts to modify the impact of the rule, law enforcement. For the judges, the prosecutors and the police are finding in the Mallory opinion far greater restrictions on police procedures than they found in the McNabb or subsequent decisions. And unless Congress acts to modify the impact of the rule, law enforcement is going to be seriously hampered. That view is shared by many judges, lawyers and Congressmen, not to mention the policemen and prosecutors.

Another important fact is that the Mallory rule *can* be modified by Congress to serve the real interests of justice without creating a "police state" or reviving the terrors of the rack.

Mallory's was not a coerced or false confession. A deputy coroner was called in to examine him after he had confessed. That official found Mallory to be in good physical condition. And Mallory told this doctor that he had not been struck or threatened and that no promises had been made to him. No such allegations influenced the Supreme Court opinion. The sole basis for striking down the Mallory conviction, resulting in the release of a dangerous criminal, seems to have been the delay in his arraignment. We do not believe Congress intended that mere delay in arraignment, while police investigate and question an arrested suspect, provided the delay is not unreasonable, should serve to invalidate an otherwise voluntary confession. If this is correct, Congress, without succumbing to panic, surely can revise the law to permit reasonable detention without sacrificing the rights of suspects or shooting holes through the Bill of Rights.

There is one more thing that might be mentioned—the right of the public to protection from the depredations of criminals. This is an important right, but one which sometimes seems to carry less weight than the rights of those suspected of crime. A problem facing Congress and the courts is that of balancing and reconciling both of these rights—although they may appear at times to conflict. We doubt that there necessarily is a conflict in the case of the Mallory ruling. If there is, it should be reconciled. And it should be reconciled—unless Washington is to be a haven for criminals who have found their way to freedom through one loophole or another. Some of the problems which the Mallory decision has posed for the police and other matters such as the question of informing a suspect of his right to remain silent will be discussed in a subsequent editorial Sunday.

Wash. Post and Times Herald
Wash. News
Wash. Star
N. Y. Herald Tribune
N. Y. Journal-American
N. Y. Mirror
N. Y. Daily News
N. Y. Times
Daily Worker
The Worker
New Leader

Editorial

Date 2-7-58

REC- 96

62-27585-

NOT RECORDED
46 FEB 11 1958

EX-128

65 FEB 12 1958

186

No! Says the Court

By DICK WEST
Editorial Staff of The News

THE BIGGEST STORY of our time is how to safeguard national security and protect an individual's life and property from criminals—and at the same time protect personal civil rights.

The Supreme Court is bending so far backwards to protect civil rights that national and individual security are in jeopardy.

It is possible, under law, for courts to be so strict in protecting freedoms that we will lose them.

The condition of lawlessness is so chaotic in Washington, itself, that most people are afraid to go out on streets at night.

"The anarchy is dreadful," the Washington Star commented.

"A citizen who steps into a manhole has a good chance of compensation for his injuries, by suing the District of Columbia. The citizen who is set upon, brutally beaten and robbed on the streets of Washington is without recourse. The law is of chief protection to his assailant."

Five men (a majority of the Supreme Court) can handcuff law enforcement and cripple the FBI's techniques to catch Communists —and they can do it under the Constitution, depending on how they interpret it.

What the Supreme Court does automatically binds every other federal court in the United States.

A REVIEW of Supreme Court decisions the last year bears out how a free nation can be shackled, under the guise of protecting freedom.

In the trial of a union official and Communist, the defendant demanded the right to inspect confidential FBI files. The government refused; it would have meant the death of the FBI.

The defendant appealed and the court upheld him, ordering the government either to let him see FBI reports bearing on his case or turn him loose.

Congress later passed a law giving partial relief to the FBI.

In California a few weeks ago, known Communists were "regretfully" turned loose by a federal judge because of a previous Supreme Court ruling on the Smith Anti-Communist Act.

In that decision, the court ruled that a Communist must be caught in an overt act—such as throwing a bomb at the Capitol—before he can be convicted.

He is free to be a Communist, even though our government and Congress declare the party and party membership to be a conspiracy to overthrow the government. He is free to spread propaganda to overthrow the government.

But to try him for conspiracy, you must catch him in the actual act of overthrowing the government. The court ruled that was what Congress "intended" to mean when it passed the Anti-Communist Act. But Congress itself made it plain otherwise.

CONGRESSIONAL investigations of subversives were hamstrung under the Watkins case.

The House Un-American Activities Committee was set up in 1934 under a resolution by the House itself that clearly explains its purpose and scope.

Watkins wouldn't talk. He was convicted for contempt of Congress. The court reversed his conviction. It ruled that neither the House resolution setting up the Un-American Activities Committee nor the nature of proceedings themselves made it clear to Watkins what the inquiry was.

In previous decisions the Supreme Court was overruling other courts.

In the Watkins case, it was overruling Congress. It was intruding in the legislative field. Its ruling was based on the false premise that Congress 23 years ago was not clear what it intended to do.

FORTUNATELY a congressional committee is examining these decisions.

Unfortunately a lot of people had to be robbed and raped and murdered in Washington, itself, before congressional investigation was undertaken.

When a court decision frees a rapist or a Communist, others of their kind are quick to learn and take advantage of it.

In Washington, police say they are almost powerless to cope with street bandits because of the Supreme Court decision limiting their right to question criminals before arraignment.

One congressman has supplied his women employees with police whistles. Many carry guns.

Washington is now 45 per cent colored. Its terrific racial problem has degenerated into a criminal problem. The Supreme Court helped create both.

Washington police say 8 of 10 crimes in the capital are committed by Negroes. In crimes of violence on streets 9 of 10 crimes are committed by Negroes. The muggers and "yokers" slip up behind you, choke you, grab your purse, beat you and dash off into the darkness.

There are usually no witnesses. If police are fortunate enough to pick up suspects, they can not hold them too long—according to the Court—for questioning.

The FBI can not tap wires to catch a Communist. Congress can not inquire into Communist conspiracy, through investigations, for fear of contempt reversals.

States can not pass their own anti-Communist laws, the court ruled, because they tread on federal jurisdiction—and the court has hamstrung federal efforts.

It's not a pleasant prospect.

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62-27585-A

- Editorial -

"Dallas Morning News"
Dallas, Texas, 2-13-58

William B. Ruggles,
Editor

62 MAR 10 1958

ENFORCE THE "LAW"!

By David Lawrence

WHEN THE DEPARTMENT OF JUSTICE started in the 1930s to enforce vigorously the Prohibition laws enacted under the 18th Amendment, the American people soon demanded repeal. In less than ten months after the 21st Amendment was submitted to the States by Congress, it was duly adopted and, thereafter, control of liquor sales was vested in the States.

Today, after nearly four years, the edict of the Supreme Court of the United States ordering segregation banned in the public schools has not been enforced throughout the country—even in the North—so as to accomplish the purposes set forth by the Court.

For on May 17, 1954, "the supreme law of the land" was proclaimed as follows:

"We come then to the question presented: Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other 'tangible' factors may be equal, deprive the children of the minority group of equal educational opportunities? We believe that it does."

The Court went on to stress the importance of "intangible considerations," such as "ability to engage in discussions and exchange views with other students," and then added:

"To separate them from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone."

Relying on that declaration, the Chicago branch of the National Association for the Advancement of Colored People complained recently that in that city only 9 per cent of the elementary schools are mixed racially, that 70 per cent are predominantly white, that 21 per cent are predominantly Negro, and that, as a consequence, "90 per cent of Chicago public-elementary-school pupils attended *de facto* segregated schools."

In New York City the situation is best described in an article in the New York *Times* by its education editor, Benjamin Fine, who writes:

"The majority of children attend schools of their own ethnic group. Although integration is now one of the 'cardinal principles' of the School Board, three out of four pupils go to a school that is in effect segregated. These are either schools where Negroes are in the vast majority, or where the white children are concentrated. Most of this is caused by residential patterns.

"Despite consistent urging by the Urban League, the National Association for the Advancement of Colored People and other groups, little change has taken place in district lines for elementary schools. A central zoning unit, authorized by the Board of Education several months ago, is still little more than a paper agency. . . . The unit has received $100,000 to study zoning lines and change them where necessary to help integration."

The *Times* writer goes on to say that "it is doubtful that complete integration—if by that term is meant the elimination of segregated schools—can ever be accomplished in the city" because the school administration is insistent "that the principle of neighborhood schools remain intact."

But what of the rights of the Negroes under "the supreme law of the land" to enjoy "equal educational opportunities," regardless of residence?

New York City's School Superintendent in a recent report said that 1,500 children are being taken short distances by bus from one school to another, to relieve overcrowded conditions and incidentally to help integration.

What about the Negro pupils, however, whose parents are willing to pay bus fares over a long distance to a white school and secure the advantages to which the Supreme Court says the Negro children are entitled? How long can the subterfuge of "residence requirement" be maintained in the face of the declaration by the Supreme Court that no Negro student can get the proper education unless permitted to attend a white school and mingle with white children?

Negro leaders in New York City argue that any New York school in which more than 40 per cent of the pupils are Negroes is not properly "integrated" and that to achieve a "racial balance" each school should contain about 15 per cent Negroes, since about 15 per cent of New York's 1,300,000 public school pupils are Negroes.

It follows that every public school in the United States—in order to carry out the doctrine enunciated by the Supreme Court—must have in it a uniform proportion of Negro students based upon the population ratio of that city or area.

The Supreme Court has ruled that "separate educational facilities are inherently unequal."

When will "the supreme law of the land" be enforced?

The quickest way to get "repeal" of the Supreme Court decision is to enforce the so-called "law." The people will act when they fully understand that the States are being deprived by federal authority of their right to control and regulate their own schools.

Mr. Tolson
Mr. Nichols
Mr. Boardman
Mr. Belmont
Mr. Mohr
Mr. Parsons
Mr. Rosen
Mr. Tamm
Mr. Trotter
Mr. Nease
Tele. Room
Mr. Holloman
Miss Gandy

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ADD 1 COURT (UP89)

MEANTIME, SEN. ~~WAYNE~~ MORSE (D-ORE.) SHARPLY ATTACKED WHAT HE CALLED A "SUSTAINED AND INSIDIOUS" DRIVE AGAINST THE SUPREME COURT.

HE ALSO COMPLAINED AT THE "GROWING TENDENCY" ON THE PART OF CONGRESS TO "SET ITSELF UP" TO REVERSE DECISIONS OF THE COURT.

MORSE MADE THE STATEMENTS AS HE INTRODUCED A BILL TO REQUIRE THAT PERSONS ACCUSED OR SUSPECTED OF FEDERAL CRIMES BE TOLD OF THEIR RIGHTS TO COUNSEL AND OTHER RIGHTS "AT THE EARLIEST APPROPRIATE TIME."

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WASHINGTON CITY NEWS SERVICE

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Mr. Tolson
Mr. Nichols
Mr. Boardman
Mr. Belmont
Mr. Mohr
Mr. Parsons
Mr. Rosen
Mr. Tamm
Mr. Trotter
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Tele. Room
Mr. Holloman
Miss Gandy

UP 9

(COURT)

ROBERT MORRIS, FORMER CHIEF COUNSEL OF THE SENATE INTERNAL SECURITY SUBCOMMITTEE, SAID TODAY CONGRESS SHOULD ACT TO CHECK THE "ENCROACHMENTS" OF THE SUPREME COURT ON ITS LEGISLATIVE FUNCTIONS.

MORRIS, A CANDIDATE FOR THE REPUBLICAN SENATORIAL NOMINATION IN NEW JERSEY, SAID IN TESTIMONY PREPARED FOR THE INTERNAL SECURITY GROUP THAT AN "AGGRESSIVE MAJORITY ON THE SUPREME COURT HAS BEEN HASTENING THE DECLINE OF CONGRESSIONAL INVESTIGATORY POWER."

THE FORMER NEW YORK JUDGE URGED APPROVAL OF A BILL TO RESTRICT THE COURT'S APPELLATE JURISDICTION BY REMOVING ITS AUTHORITY OVER CASES GROWING OUT OF CONGRESSIONAL INVESTIGATIONS.

THE MEASURE ALSO WOULD REMOVE THE COURT'S APPELLATE JURISDICTION OVER CASES INVOLVING STATE SUBVERSIVE LAWS, GOVERNMENT SECURITY CASES, AND CASES INVOLVING CONTEMPT OF CONGRESS.

MORRIS SAID THE CONSTITUTION MAKES IT CLEAR THAT "CONGRESS HAS NOT ONLY THE POWER BUT THE DUTY TO REGULATE AND MAKE EXCEPTIONS TO THE APPELLATE JURISDICTION OF THE SUPREME COURT WHENEVER NECESSARY."

MORRIS SAID "THIS IS AN OBLIGATION THAT CONGRESS CANNOT TAKE LIGHTLY OR DISMISS. THE CHECK-AND-BALANCE SYSTEM OF THE CONSTITUTION MUST BE AFFIRMATIVELY PRESERVED AND CONGRESS CANNOT ABDICATE WHERE ITS RESPONSIBILITIES ARE SO CLARLY DEFINED."

TOO OFTEN IN THE PAST, HE SAID, "CONGRESSES HAVE CONSISTENTLY BEATREATED IN THE FACE OF ENCORACHMENTS ON THEIR DUTIES AND POWERS BY AGGRESSIVE JUDICIAL AND EXECUTIVE AUTHORITY."

HE SAID THAT "AT A TIME OF GREAT CRISIS TO WHICH WE ARE DRAWING NEARER EVERY DAY, WE NEED THE FULL BENEFIT OF OUR CHECK-AND-BALANCE SYSTEM."

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WASHINGTON CITY NEWS SERVICE

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Assault on Justice

As the Senate Internal Security Subcommittee resumed hearings on the Jenner bill to undercut the Supreme Court, it heard a novel argument to the effect that the measure is unconstitutional. The leading testimony this time is very different from that offered last year when the Subcommittee heard only the author of the bill and a staff member and then reported it favorably. Leaving aside the arguments of the extreme rightists, the bill is now being accurately pictured as a flagrant attack upon our constitutional system.

Mr. Jenner's bill would deprive the Supreme Court of jurisdiction to hear cases in five specified categories. What it means is that the Senator wishes to discipline the Court for handing down various liberal decisions with which he disagrees and to prevent it from deciding similar cases in the future. His excuse for using this method is that Congress once before, in 1868, withdrew the jurisdiction of the Court to hear a habeas corpus case and the Court bowed to that edict. Because of the unanimity of the Court in that case and the recognition by the Court in other cases that Congress may curtail its jurisdiction, there has been a widespread assumption that the Jenner bill would be upheld if passed.

Attorney Joseph L. Rauh, who analyzed the bill for Americans for Democratic Action, has serious doubts on this point. He recognized the sweep of the language in which the Constitution gives the Supreme Court appellate jurisdiction (in all cases in which it does not have original jurisdiction) "with such exceptions and under such regulations as the Congress shall make." But he also pointed to Chief Justice Marshall's intimation that Congress could not deprive the Supreme Court of *all* its appellate jurisdiction. Other authorities argue that the Founding Fathers could not have intended to leave in the hands of Congress the power to destroy the role of the Supreme Court in the constitutional system.

Certainly a strong argument can be made along this line, although it runs against some very specific language in the Constitution. We surmise that the Founding Fathers did intend to leave Congress discretion in adjusting the jurisdiction of the Supreme Court, a very dubious decision indeed, but they also expected Congress to exercise common sense. The fact that Congress has ventured into this delicate area only once and has since been thoroughly ashamed of its conduct should be sufficient answer to Mr. Jenner. Regardless of what the present Supreme Court might do if the broad issue raised by the Jenner bill should ever reach it, the Judiciary Committee itself should bury this antijustice maneuver under such a mountain of opprobrium that no future legislature will be inclined to revive it.

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Rogers Criticizes Bill To Guide Succession

Attorney General William P. Rogers yesterday opposed as unconstitutional and ineffective the Presidential disability bill approved by a House Judiciary Subcommittee last week.

The Democratic-backed bill declares the meaning of the disability clause in the Constitution is that the Vice President shall decide Presidential disability when the Chief Executive fails to act. It sets up a commission dominated by members of Congress to advise the Vice President. The commission would have power to restore a recovered President to his job if the Vice President refused to step down.

Rogers told a press conference the bill is unconstitutional to the extent that it gives any power to a commission dominated by the legislative branch. The power to decide disability is now vested by the Constitution in the executive branch and could be transferred to another branch only by constitutional amendment, he said.

Rogers said he was opposed to creating a commission from Congress that could "harass" a President it didn't like. He added that he sees no need for a statute authorizing Congressional leaders to advise the Vice President. They can do that anyway, he said.

The House bill, which was approved in subcommittee by a straight 3-to-2 party vote, was not considered at yesterday's meeting of the full House Judiciary Committee. Chairman Emanuel Celler (D-N. Y.), its sponsor, said he would try to get it before the Committee at next Tuesday's meeting.

Rogers also announced his opposition to a bill sponsored by Sen. William E. Jenner (R-Ind.) to strip the Supreme Court of its power to review most security cases. The Senate Internal Security Subcommittee is holding hearings on the bill.

Rogers said he would present his views to the Committee. His only comment yesterday was: "I don't think you should pack the Court or take away its jurisdiction because you disagree with [illegible] decisions."

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New Leader

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Bar Opposes Jenner Bill To Curb Supreme Court

ATLANTA, Ga., Feb. 26 (AP).—The American Bar Association does not want Congress to try to limit the Supreme Court's jurisdiction over appeals.

The House of Delegates, governing body of the ABA, completed a two-day winter meeting yesterday by adopting a resolution opposing a bill introduced in the Senate by Senator Jenner, Republican of Indiana.

The Jenner bill would take from the high tribunal the right to hear appeals on cases involving congressional committees, executive security programs, State security programs, school boards, or admissions to the bar.

The resolution opposing this proposal was amended from the floor to provide that members of the ABA reserve the right to criticize court decisions and that they do not approve or disapprove them.

As originally drafted by the ABA's Board of Governors at the suggestion of Senator Wiley, Republican of Wisconsin, the resolution opposed the Jenner bill without expressing any opinions on court decisions.

Before ending the meeting, the House of Delegates elected Ross L. Malone of Roswell, N. Mex., as the ABA's president nominee. Sylvester C Smith, jr., of Newark, N. J., was chosen nominee for chairman of the House of Delegates.

The election will take place in August at the ABA's annual meeting in Los Angeles. Mr. Malone succeeds Charles S. Rhyne of Washington, while Mr. Smith takes over from James L. Shepherd, jr., of Houston, Tex.

Mr. Malone, who will be 48 in September, served as Deputy United States Attorney General in 1952-3. He was instrumental in establishing procedure under which the Justice Department consults with the ABA as to qualifications of proposed appointees to the Federal judiciary.

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